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IN THE

Supreme Court of the United States

MANUEL F. SALAZAR-ESPINOSA,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I

TO PREVENT JUROR CONFUSION AND PREJUDICIAL VARIANCE OF A CONSPIRACY INDICTMENT, DOES DUE PROCESS REQUIRE A MULTIPLE CONSPIRACY CHARGE EVEN IN TRIALS OF ONE DEFENDANT?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Manuel F. Salazar-Espinosa
United States of America

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PETITION FOR WRIT OF CERTIORARI

Manuel F. Salazar Espinosa, respectfully prays that a writ of certiorari issue to review the order below.

OPINION BELOW

The Summary Order of the Second Circuit Court of Appeals, decided on September 22, 2009, affirming the judgment of conviction is reported at *United States v. Rojas*, Slip Copy, 2009 WL 3015413 (2d Cir., September 22, 2009). App. 1a[1] The Judgment of Conviction of the United States District Court for the Southern District of New York was entered on March 3, 2008. App. 6a.

JURISDICTION

Jurisdiction of the United States District Court for the Southern District of New York was based on 18 U.S.C. § 3231. Jurisdiction of the Second Circuit Court of Appeals was based on 28 U.S.C. § 1291. The United States Supreme Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Constitutional

The Fifth Amendment provides in relevant part, that:

> No person shall be . . . deprived of life, liberty, or property, without due process of law.

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[1] Alphanumeric citations beginning with "1a" refer to pages of petitioner's annexed Appendix

The Sixth Amendment provides, in relevant part, that:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, . . .; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

B. Statutory

21 U.S.C. § 812 identifies cocaine as a Schedule II controlled substance.

21 U.S.C. § 952(a) states in relevant part that

> It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter. . . .

21 U.S.C. § 959(a) states in relevant part that

> It shall be unlawful for any person to manufacture or distribute a controlled substance in schedule I or II . . .
>
> (1) intending that such substance or chemical will be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States; or
>
> (2) knowing that such substance or chemical will be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States.

21 U.S.C. § 960(a)(3) states in relevant part that

> Any person who—
>
> (3) contrary to section 959 of this title, manufactures, possesses with intent to distribute, or distributes a controlled substance, shall be punished as provided in subsection (b) of this section.

STATEMENT OF THE CASE

A single defendant tried pursuant to an indictment that arguably sets forth multiple conspiracies faces application of what petitioner refers to as "the single defendant rule." The single defendant rule functions as a virtually unrebuttable presumption that there can be no prejudice in denying jury consideration of multiple conspiracies in a trial with only one defendant. Application of the single defendant rule bars administration of the multiple conspiracy charge under the theory that even if more than one conspiracy was demonstrated by the evidence at trial, the failure to give the charge is presumed harmless.

When proving a defendant's participation in a conspiracy involves establishment of more than one element in that single conspiracy, however, as with the conspiracy to import that is the subject of this Petition, the underlying premise of the single defendant rule is no longer operative and due process is compromised. That is what occurred in this case and the reason for this Petition.

In this case, petitioner, Manuel F. Salazar-Espinosa, was tried for conspiring to import drugs into the United States. 21 U.S.C. § 952(a), § 959(a)

and § 960(a)(3). Proving participation in an importation conspiracy requires the element of knowledge/intent to import into the United States to be joined with knowledge/intent to distribute in the one conspiracy alleged in the indictment. The requirement of two elements creates the risk that if disparate conspiracies are proven to a jury, one element could be supplied by one conspiracy and the second by a different conspiracy. Thus, it is not the potential for prejudice created by the joinder of participants that is at issue, but, rather, the risk of a failure altogether of the proof of the elements necessary to convict the defendant of the actual crime of conspiracy (to import) charged in the Indictment—a variance.

In the subject case, a multiple conspiracy charge would have addressed the issue, but none was requested and none given to the jury (hence warranting plain error review). The jury was thus permitted to combine proof of participation in one distinct conspiracy to distribute (involving drugs hidden in a large industrial crane) about which there was significant evidence that importation into the United States was not intended, with knowledge of importation in connection with other separate conspiracies that were the alleged subject of a post-arrest statement taken from petitioner. This mismerging of conspiratorial elements deprived petitioner of his right to due process.

A. Investigation, Arrest and Transfer to the Southern District of New York

The government authorized a known narcotics trafficker, Jose Israel Guzman-Morales ("Guzman"), a confidential informant operating with the gov-

ernment since February 2005, to engage in a series of consensual recordings of individuals allegedly involved in a conspiracy to transport drugs.

The individuals recorded included: (1) Alvaro Ardila-Rojas ("Ardila"); (2) Andres Cajiao-Barberena ("Cajiao"), a Colombian national; (3) Jorge Patricio Asaf-Gomez ("Asaf"), a Mexican national; and (4) Diego Alejandro Ramirez-Moreno ("Ramirez"), a Colombian national; and (5) petitioner. Recordings took place on the following dates: April 29, 2005, May 16, 2005, "late June, early July 2005," two conversations on July 25, 2005 and another conversation identified as "July 2005." Petitioner was a participant in only the conversations of April 29th and May 16th, as he was arrested on May 23, 2005 in Colombia.

At the time of his arrest, petitioner was questioned and then transported to Bogota, Colombia where he was further questioned, by United States Special Agents Warren Douglas Lowe and Terry Cole. This questioning generated post-arrest statements, which were later reduced to reports prepared by the agents. App. 71a.

On July 21, 2005, months after petitoner's arrest, 1,300 kilograms of cocaine were located in a red crane in a warehouse and seized in Panama.

The conduct described in these post-arrest statements had nothing to do with the conspiracy charged and occurred outside the period of the conspiracy. In fact, at trial, the interrogators admitted that they were not interested in any particulars concerning the conspiracy charged and they did not question petitioner about it and obtained no statements from defendant concerning conduct in con-

nection with it. Instead, they were interested only in securing his future cooperation. App. 33a-35a (Agent Lowe), App. 57a-61a (Agent Cole).

At trial, Agent Cole testified that petitioner discussed his drug activities in connection with a Mexican cartel. Agent Cole further testified that petitioner stated he was involved with a Mexican cartel whose members included Oscar Valencia, Armando Valencia, and Jorge Mario, and that he recruited pilots. Petitioner also discussed a specific shipment of cocaine.

On cross, however, it was admitted that *none*—not one—of petitioner's assertions was verified by the government. It was admitted that the government was not even interested in confirming any of its intelligence that led to the Indictment, and that, in fact, Agent Cole had not even read the Indictment. App. 57a-59a. It was irrefutably established that none of the alleged participants in the conspiracy charged in the Indictment involving the red crane were mentioned by petitioner during his post-arrest questioning. Nothing was said about Ardila, Cajiao, Guzman or Asaf. Nothing was said about a red crane. App. 59a-61a. He was not even asked questions about a shipment going to Panama in a red crane. App. 61a. Petitioner did not identify the receivers of the drugs in Mexico or New York; indeed, he was not even asked that question.

Petitioner was questioned by the agents because they wanted him to cooperate with the government. App. 59a. The questions were thus aimed to uncover what he could do, not the specifics of what he had actually done—a critical distinction that is well illustrated by the post-arrest reports of the statements. *See* App. 71a-83a. That the reports concerning

petitioner's post-arrest statements did not demonstrate that petitioner was making statements of fact concerning his involvement in the conspiracy charged in the Indictment may be fairly inferred by the government's decision not to introduce the reports. It was petitioner who placed the reports in evidence as the reports show that petitioner was asserting what he could do for the government, not what he was doing—petitioner was phrasing his statements in the context of an interview assessing cooperation. *Id.*

On or about July 26, 2005, petitioner was charged in Indictment S3 05 Cr. 517 (LAK) ("the Indictment"). App. 17a. Petitioner was extradited on August 22, 2006 to the United States for trial in the Southern District of New York.

B. Trial and the Government's Case

Petitioner's trial commenced on June 11, 2007 and proceeded through June 15, 2007.

Ardila testified that petitioner's role would be to arrange for the shipment of cocaine from Colombia to Panama. App. 49a. The record shows that petitioner arranged only for the cocaine to travel from Colombia to Panama. In fact, it was another associate of Ardila, an individual known as "Caballo," a person in the drug trafficking business in Mexico, who was responsible for arranging transportation of the cocaine in the crane to Mexico from Panama. And, very significantly, Ardila denied that Caballo worked for petitioner instead indicating only that they did business together. App. 50a-51a.

Petitioner was not responsible for overseeing or otherwise controlling the receipt and packing of the cocaine into the crane. His responsibility was limited to assuring that the drugs would arrive into

Panama from Colombia. He was arrested on May 23, 2005, prior to the arrival of the drugs in Panama.

a. Guzman

Guzman was the government's confidential informant who arranged the entire deal. He was the alleged conduit to unidentified "Mexican cartels" that were purportedly going to take drugs into the United States. The only evidence of any buyer to take the drugs into the United States were vague references to mysterious and unnamed "Mexican cartels." Notably, Guzman, the CI upon which the assertion is based and the alleged conduit to these "cartels," did not testify.[2] Further, it cannot be reasonably denied that Guzman, who orchestrated the entire deal, could direct the drugs as he wished. Since it was in his interest to indicate that the drugs would be going to the United States, apparently that is what he did, *after the fact.*

b. Ardila

Ardila was the only coconspirator who testified at trial. He was a partner-in-fact with CI Guzman in various international narcotics ventures for years before Guzman knew of petitioner. Undoubtedly with the aid of Guzman's protection, Ardila's trafficking enterprise became massive—he admitted to involvement in trafficking 100,000 kilograms of cocaine "for many people," and to laundering as much as $400,000,000.

Discovery confirmed that Ardila was known to the government as early as August 2003. Ardila testified

[2] The government made a proffer *ex parte* concerning Guzman's role as part of its response to petitioner's motion to compel Guzman's testimony at trial.

that he introduced Guzman to petitioner early in 2005. Ardila, Pato (Asaf) and Cajiao were involved in European exports together, and Ardila had his "own transportation company to Europe." App. 52a. He organized and ran a network of money laundering for numerous customers—one of whom was petitioner. Discovery also revealed that Ardila had several transportation companies.

Petitioner and Ardila discussed a transaction involving Guzman, whereby petitioner's role would be to arrange for the shipment of cocaine from Colombia to Panama. App. 49a. This transaction became known as the "crane transportation." The record shows that the actual planning and coordination of the crane transportation occurred without input from petitioner as he was already incarcerated.

As to the destination of the drugs, Ardila's testimony was contradictory. *See* App. 42a-44a (Guzman would take drugs into Mexico and to unknown Mexican cartel for import to United States) and App. 43a-45a (Caballo would take responsibility to take drugs to Mexican cartel).

Most significantly, however, *Ardila specifically denied that he would have participated in the scheme with Guzman if he had known the drugs were destined for the United States.* App. 53a.

c. Cajiao

According to Ardila's testimony at trial, Cajiao, who was also known as "Temo" was in charge of the warehouse in Panama in which the large red crane that is the centerpiece of the subject conspiracy was housed, awaiting to be filled with cocaine transported from Colombia.

The Crane Conspiracy and the Statement Cocaine

It is submitted that in this case the government presented evidence of two or more distinct conspiracies/crimes disguised as one—a circumstance well hidden in the Indictment. While it is true that the government did not need to allege overt acts to adequately plead the conspiracy count, in this case, the government chose to do so. It thereby included uninvestigated, unsubstantiated, uncorroborated allegations that were never placed in context and had nothing to do with the crime that was the ostensible subject of the conspiracy actually charged.

The "crane conspiracy" was the heart of the government's case. The government opened to the jury with a picture of an enormous crane, *see* App. 27a, accompanied by 19 references to it. App. 26a-33a. And, at trial, the government stated that "[t]his crane shipment is at the center of Count Two, and therefore, how that shipment is structured goes to the very heart of the conspiracy." App. 46a.

The trial thus focused on a transaction that concerned petitioner's transportation of 1,500 kilograms of cocaine from Colombia to Panama, to a warehouse where the crane was located. The government alleged that the evidence showed petitioner knew the cocaine was to be loaded into secret compartments in the crane for shipment to Mexico through codefendant, Jorge Asaf (a/k/a Pato). App. 38a-40a. While this effort was in progress, however, on July 21, 2005, Panamanian agents intervened, seized the shipment and arrested various participants, including Ardila and Cajiao.

At the time of the seizure, petitioner had long since been detained, having been arrested in Cali, Colombia on May 23, 2005 and questioned. He was then transported to Bogota, Colombia where he was further questioned.[3] Nevertheless, as set forth above, defendant was questioned on at least two occasions by Special Agents Lowe and Cole, generating post-arrest statements, *see* App. 71a, that the government began to characterize at trial as "confessions." App. 62a-68a.

Based upon the Indictment, the government's presentation of evidence, and the defense theory, *the trial focused upon a very narrow question—whether the evidence showed, beyond a reasonable doubt, that petitioner was aware that there was a high probability that the cocaine intended for shipment in the crane would be imported into the United States.*

As demonstrated to the jury by the defense, the evidence showed that Ardila would not have participated in the scheme if the drugs were destined for the United States, no facts were shown demonstrating any plan or connection between the drugs and the United States, and the evidence strongly suggested that the drugs were destined for Europe. *See* discussion, *supra*. When the trial dust settled, therefore, based on the proofs concerning the crane conspiracy, it is submitted that the jury must have had a reasonable doubt as to whether petitioner participated in the crane conspiracy with an awareness that there was a "high probability" the cocaine would be imported into the United States.

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[3] As discussed at length above, this questioning generated post-arrest statements that had nothing to do with the crane cocaine.

In the Indictment, the government alleges, as an overt act of the purportedly single conspiracy, that "on or about May 23, 2005, [petitioner] traveled to Cali, Colombia to recruit pilots for the purpose of transporting 5,000 kilograms of cocaine destined for New York." App. 19a. The trial disclosed that the evidence supporting this allegation was derived exclusively from post-arrest statements purportedly given by petitioner to DEA Special Agents on May 23 and May 26, 2005. *Compare* Indictment, App. 19a *with* post-arrest statement, App. 79a.

C. The Jury Charge, the Verdict, Post-Judgment Motions and Sentence

The jury was charged on June 14, 2007. A multiple conspiracy charge was not included. During deliberations, the jury requested that it be permitted to review the post-arrest statements characterized by the government as "confessions," and these documents were supplied. App. 79a. On June 15, 2007, the jury returned a verdict of guilty on all three counts. App. 79a. Motions pursuant to both Rule 29 and 33 were denied. App. 5a.

Petitioner was sentenced on February 3, 2008 to 30 years imprisonment on Counts I and II, and 20 years on Count III to run concurrently. App. 8a. $50,000,000 was also assessed against him as "Additional Forfeited Property." App. 16a.

WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED

QUESTION I

TO PREVENT JUROR CONFUSION AND PREJUDICIAL VARIANCE OF A CONSPIRACY INDICTMENT DOES DUE PROCESS REQUIRE A MULTIPLE CONSPIRACY CHARGE EVEN IN TRIALS OF ONE DEFENDANT?

Background

> A conviction cannot stand if the government has alleged a single conspiracy, but its proof demonstrates multiple conspiracies. Accordingly, 'where the proof is susceptible to the inference that there was more than one conspiracy, the question of whether one or more than one conspiracy has been established is a question of fact for a properly instructed jury.'

United States v. Alkins, 925 F.2d 541, 553-554 (2d Cir. 1991) (citing *Kotteakos v. United States*, 328 U.S. 750, 66 S. Ct. 1239 (1946); *United States v. Uccio*, 917 F.2d 80, 87 (2d Cir.1990); *United States v. Friedman*, 854 F.2d 535, 561 (2d Cir.1988), *cert. denied*, 490 U.S. 1004, 109 S. Ct. 1637 (1989) (quoting *United States v. Maldonado-Rivera*, 922 F.2d 934, 962 (2d Cir.1990)). *See also*, *Berger v. United States*, 295 U.S. 78, 80-82, 55 S. Ct. 629 (1935).

This Petition concerns the interference with that proper instruction of a jury caused by the application of the "single defendant rule" to preclude a multiple conspiracy charge despite the fact that one was necessary and warranted.

Legal Argument

In order to warrant a reversal in connection with a claim that multiple conspiracies were demonstrated at trial, petitioner must demonstrate the likelihood of multiple conspiracies having existed and substantial prejudice due to the failure to give the charge. *See Kotteakos*, *supra* at 773-774, 66 S. Ct. at 1252.

As the trial unfolded, but most particularly in light of the government's summation, it became clear that, as petitioner shut down various government attempts to demonstrate that he was aware the crane cocaine was bound for the United States, the government decided to combine the awareness of a "high probability" that certain shipments of cocaine were destined for the United States[4] as allegedly dis-

[4] Where, as here, petitioner denied that he had the requisite intent or knowledge that the cocaine was ultimately destined for the United States, the government was required to adduce evidence showing that petitioner knew to a "high probability" that the drugs at issue were destined for the United States. *See Leary v United States*, 395 U.S. 6, 89 S. Ct. 1532 (1969) (a defendant can be said to know a fact if he "is aware of a high probability of its existence, unless he actually believes that it does not exist." *Id.* at 46 n. 93, 89 S. Ct. 1532). Thus, it was necessary for the jury to find beyond a reasonable doubt that petitioner acted with an awareness of the "high probability" that the narcotics that were the subject of the Indictment were ultimately destined for the United States in order to charge him with knowledge of that *alleged* fact.

played in petitioner's post-arrest statements concerning the statement cocaine, with the offense concerning the crane cocaine. The record makes it clear, however, that the conduct discussed in petitioner's post-arrest statements concerned activities that had nothing to do with petitioner's participation in the crane conspiracy.[5]

Despite this disconnect, the government resorted to proving the knowledge element of the crane conspiracy alleged in Count I with the awareness that there was a "high probability" that the statement cocaine was bound for the United States. The result is that it is impossible to know if the jury actually found beyond a reasonable doubt that petitioner was aware that there was a "high probability" that the crane cocaine—the cocaine that was the subject of the Indictment—was bound for the United States.

Rather, it is likely that some jurors believed petitioner was aware that the statement cocaine was bound for the United States[6] and others believed he was aware that the crane cocaine was bound for the

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[5] It could be argued that the post-arrest statements describe conduct that, as introduced at trial, does not meet the parameters of a legal conspiracy and petitioner makes that argument. Regardless of whether this conduct describes a conspiracy, however, it has no connection to the conduct that was the subject of testimony at trial concerning the crane conspiracy. Petitioner's post-arrest statements discuss actors, time-frames, methodologies and subject matter different from that addressed in the Indictment. The statements simply do not reference conduct that was a part of the conspiracy set forth in the Indictment.

[6] The imputation of knowledge of importation concerning the United States to petitioner by virtue of his post-arrest statements is insufficient to satisfy the legal elements of the subject conspiracy.

United States. Consequently, it is impossible to know if the jury convicted petitioner unanimously of any one crime—rendering petitioner's convictions under Counts I and II of the Indictment improper.

It is axiomatic that a conviction may not be based solely upon a defendant's post-offense confession or admission. *See Opper v. United States*, 348 U.S. 84, 89 (1954). In order for there to be sufficient evidence for a conviction, there must be, in addition to defendant's own statement "substantial independent evidence which would tend to establish the trustworthiness of the statement." *Id.*; *United States v. Bryce*, 208 F.3d 346, 354 (2d Cir. 2000). Here, no such substantial independent evidence was ever proffered by the government in connection with the "statement cocaine."

The conspiracy described in his post-arrest statement, however, bears no relation to the one alleged in the Indictment as he named different participants (Francisco Gonzalez and Manuel Oscar Valencia as compared with Guzman, Ardila, Asaf and Cajiao), different locations (undisclosed origin of contraband traveling to New York as compared with cocaine arriving in Panama for transport to Mexico), and different stages of completion (beginning stage as compared with a delivery already in progress). In fact, the government should have known that these were separate acts in separate conspiracies as the government orchestrated the conspiracy set forth in the Indictment by controlling Guzman and permitting him to arrange for the 5,000 kilogram transport included as an overt act in the Indictment. The government knew that Valencia and Gonzalez were not involved in the charged conspiracy and the government agents, as their above-described testimony

indicates, were also well aware of the lack of any connection between the two. *See, e.g.* App. 60a-61a (Agent Cole).

A. Did the Government's Blend of Knowledge of Importation Derived from Petitioner's Post-Arrest Statements with His Participation in the Crane Conspiracy Violate Due Process[7]

In order to convict for conspiracy, "the jury must find that [the petitioner] was a member of the conspiracy charged in the indictment; membership only in some other conspiracy will not suffice." *United States v Maldonado-Rivera*, 922 F.2d 934, 959 (2d Cir. 1990), *cert. denied*, 501 U.S. 1233 (1991).

As explained above, there can be no reasonable question that the conduct discussed in petitioner's post-arrest statements had nothing to do with the conspiracy presented to the jury for consideration in Count I—the crane conspiracy. Factors to be considered in determining whether one or more conspiracies are presented by a given record include, proof of a common source of supply and of mutual dependence and assistance involving a "consistency of personnel, method and type of operation." *E.g.*, *United States v. Cambindo Valencia*, 609 F.2d 603, 624-625 (2d Cir. 1979), *cert. denied, sub nom.*, *Prado v. United States*, 446 U.S. 940, 100 S. Ct. 2163 (1980) (citations omitted).

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[7] Petitioner respectfully reemphasizes that, for analytical purposes, he will argue about the cocaine discussed in his post-arrest statements as being the subject of a conspiracy. He does not admit, however, that proofs were made that established a conspiracy actually existed or that he was a member of such a conspiracy.

In this case, other than petitioner, none of the individuals mentioned post-arrest were involved with the crane. *See* App. 61a. The methodologies described, an overland shipment by crane as opposed to transportation by plane, were different. Further, petitioner's alleged conduct, arranging shipment to a Panamanian warehouse as opposed to recruiting pilots and transporting funds was different. There was no evidence of mutual assistance or interdependence between the Valencias and the Herrera organization and the alleged members of the crane conspiracy, including Caballo, Asaf, Cajiao, Guzman and Ardila. There was no evidence of a singular source of supply.

Accordingly, the government presented, not one, but, at minimum, two conspiracies to the jury. Then, as will be discussed next, it attempted to blend them together causing confusion and prejudice that cannot be reconciled with a fair trial.

It was in its summation that the government exhibited its intent to prejudicially merge disparate crimes under one roof in Counts I and II. In Count I the blending was within a conspiratorial context. In Count II, it was substantive. In both Counts, however, the element of knowledge of importation exhibited in the post-arrest statement was merged with the facts of the crane cocaine transaction.

Recognizing that petitioner's knowledge of importation into the United States was the critical consideration in the case, and that it lacked other proof, the government went straight to the post-arrest statements to demonstrate that knowledge during its summation. App. 62a-66a. Back and forth went AUSA Bansal, referring to the crane and dealings with Asaf as the conspiracy charged in the Indict-

ment, App. 66a-67a, but then answering the question of how petitioner knew that the crane cocaine was bound for the United States by referencing the post-arrest statement which concerned matters not at all linked to the crane conspiracy. App. 66a-67a. Similarly, the government improperly used a conversation among the purported crane conspirators (petitioner, Ardila, Asaf, and Guzman) to give substance and weight to the purported transportation of the statement cocaine. App. 64a-66a.

The mixing of proofs is uncontrovertible. Its effect was to wrongfully and prejudicially impart an impression of awareness that the crane cocaine shipment was bound for the United States by virtue of general statements showing awareness that cocaine is imported into the United States in connection with his post-arrest statements—which had absolutely *nothing* to do with the crane conspiracy.

The result is a jury verdict that took the knowledge of importation element required to prove petitioner guilty of Counts I and II from a set of facts that had no connection to the conspiracy alleged in Count I or the substantive crime alleged in Count II. Assuming, *arguendo*, proof of a post-arrest statement conspiracy, of which conspiracy was he found guilty? Proof of an awareness of a "high probability" of importation of the crane cocaine was lacking—without it, there is no crime. Proof of a conspiracy wherein petitioner recruited pilots, based on verified, hard evidence and affirmative, factual post-arrest statements was lacking. Without them there was no crime.

But petitioner was convicted. He was convicted because the government alleged a single conspiracy—the crane conspiracy—but submitted evidence

concerning multiple conspiracies. The crane conspiracy was the heart of the government's case, App. 46a, the focus of the trial and the dominant subject of the government's opening and summation—the conspiracy to which all conduct was attributed. And, to that conspiracy the government assigned knowledge of importation from a second purported conspiracy, wrongfully and prejudicially blending the two in the jury's mind in a classic example of prejudicial "spillover" of evidence that cannot be allowed to survive this challenge. *See United States v. Cambindo Valencia*, 609 F.2d 603, 625 (2d Cir. 1979); *United States v. Alkins*, 925 F.2d 541, 553-554 (2d Cir. 1991) (citing, *e.g.*, *Kotteakos v. United States*, 328 U.S. 750, 66 S. Ct. 1239 (1946) ("A conviction cannot stand if the government has alleged a single conspiracy, but its proof demonstrates multiple conspiracies") and cases cited *supra*.[8]

[8] Also mixed into the government's summation were references to other transactions: one involving the alleged transportation of 30 kilograms to Los Angeles, App. 67a-69a, and another, clearly in the past, involving hollow doors App 69a-70a These too had nothing to do with the crane conspiracy, there is no evidence that the transactions were linked, and even assuming that it was demonstrated that petitioner had the requisite awareness of a United States importation of the 30 kilogram shipment, it does not impart to him knowledge that the crane cocaine was bound for the United States. Of course, petitioner knew that drugs go to the United States—everyone knows that - the point is that the evidence presented at trial did not establish his knowledge or intent that the crane cocaine was going there Rather, it further muddied the proofs, added to potential jury confusion and rendered it even more likely that the element of awareness of a United States shipment was taken from one set of proofs and combined with the circumstances of another

B. To Prevent Juror Confusion and Prejudicial Variance, Does Due Process Require a Multiple Conspiracy Charge Even In Trials of One Defendant?

"Whether the government has proven the existence of the conspiracy charged in the indictment and each defendant's membership in it, or instead has proven several independent conspiracies is a question of fact for a properly instructed jury." *E.g.*, *United States v. Calbas*, 821 F.2d 887, 892 (2d Cir.1987), *cert. denied*, 485 U.S. 937, 108 S. Ct. 1114 (1988). Thus, where the record readily permits a reasonable jury to find "more than one such illicit agreement, or . . . an agreement different from the one[s] charged," *United States v Brandon*, 17 F.3d 409, 449 (1st Cir. 1994), courts are encouraged to alert the jury to the possibility of several conspiracies, warn against prejudicial "spillover" of evidence, and instruct to acquit if multiple conspiracies are found, or otherwise admonishing them to acquit unless they find that the defendant was a member of the precise conspiracy charged. *See e.g.*, *United States v Aracri*, 968 F.2d 1512, 1520 (2d Cir. 1992); *United States v. Blanco*, 861 F.2d 773, 782 (2d Cir.1988), *cert. denied*, 489 U.S. 1019, 109 S. Ct. 1139 (1989).

To prevent the threat of prejudicial "spillover" of evidence, a court should charge the jury concerning multiple conspiracies whenever there is sufficient evidence to support such a conclusion from the facts. To promote the goal of "keeping distinct conspiracies distinct," the court should describe explicitly the possibility of several conspiracies and instruct the jury that in order to convict a given defendant, it must "find that he was a member of the

conspiracy charged in the indictment and not some other conspiracy." *Cambindo Valencia*, 609 F.2d at 625 (citing and quoting, *inter alia*, *Kotteakos*, *supra*, 328 U.S. at 770, 66 S. Ct. 1239).

Here, no such instructions were given. Thus, the jury was not alerted to the existence of multiple conspiracies in connection with Count I. Nor was the jury instructed that its decision must be unanimous as to which particular conspiracy it believed defendant was guilty.

Similarly, the jury was not presented with the concept that various fact patterns cabcould have fallen within the contours of the substantive offense loosely described in Count II. Nor was the jury instructed that it must be unanimous as to the substantive offense in Count II to which it intended to hold defendant guilty. *Cambindo Valencia*, 609 F.2d at 628-629.[9]

These errors cannot be deemed harmless. They likely caused the jury to confuse the common purpose of each alleged single enterprise with "several, though similar purposes of numerous separate adventures of like character." *Kotteakos v. United States*, *supra*, 328 U.S. at 769. Because of the distinct factual allegations presented in this case concerning different conspiracies and different offenses

[9] It is respectfully submitted that the court should have recognized that a multiple conspiracy charge was necessary at the close of the government's case in order to protect petitioner's substantial right to due process and to be punished only for delineated crimes. The trial court had the discretion to avert a miscarriage of justice under Rule 33, or to recognize that the record shows that the jury could not have found the essential element of knowledge beyond a reasonable doubt pursuant to Rule 29.

involving different participants, and because the proofs are uncertain as to each, there can be no confidence on this record that the jury unanimously agreed that defendant was convicted of participating in one conspiracy or another, by virtue of having committed one offense or another. Indeed, the prejudice is powerfully exhibited by the government's strategic decision to merge the element of knowledge from one to overcome the failure of that very element in the other.

A defendant is generally entitled to a jury instruction based on a defense theory for which there is a foundation in the evidence. *United States v. Kwong*, 69 F.3d 663, 667 (2d Cir.1995), *cert. denied*, 517 U.S. 1115 (1996); *United States v. Bryser*, 954 F.2d 79, 87 (2d Cir.), *cert. denied*, 504 U.S. 972 (1992).

The evidence presented at trial demonstrated that defendant stood accused in the Indictment S8 of a number of disparate conspiracies. He was thus entitled to a multiple conspiracy charge and failure to do so was error. As discussed above, the failure to charge multiple conspiracies, permitted the government to present the jury with unrelated ventures featuring distinct elements of the offense of conspiracy to import and merge them into one purported overarching conspiracy.

In the Second Circuit, " 'the test for reversible error, if two conspiracies have been established instead of one, is whether the variance affects substantial rights. The material inquiry is not the existence but the prejudicial effect of the variance.' " *United States v. Sir Kue Chin*, 534 F.2d 1032, 1035 (2d Cir. 1976) (quoting *United States v. Agueci*, 310 F.2d 817, 827 (2d Cir. 1962) and citing numerous

cases which are omitted). The touchstone is *prejudice*. Where there is prejudice there is error.

The justification for not issuing a multiple conspiracy charge is the single defendant rule as articulated in *United States v. Sir Kue Chin*, 534 F.2d 1032 (2d Cir. 1976). Petitioner submits, however, that *Sir Kue Chin* actually supports his argument. In *Sir Kue Chin*, the defendant was found to have purchased narcotics from two individuals to supply a single customer.[10] The defendant sought to dismiss the indictment, arguing prejudicial variance. *Id.* at 1034-1035. Given the lengths to which the trial court had gone to protect the defendant from the concerns raised by multiple conspiracies, his claim was deemed to be without merit. *Id.* at 1035.

In rejecting the claim of prejudice, in *Sir Kue Chin*, the appellate court explained that

> [e]ven if two conspiracies had been proved, both conspiracies could properly have been joined in the same indictment, since there was only one defendant. Fed.R.Crim.P. 8(a) specifically provides that '(t)wo or more offenses may be charged in the same indictment . . . if the offenses charged . . . are of the same or similar character or are based . . . on two or more acts

[10] It is noteworthy that in *Sir Kue Chin*, after all evidence was presented at trial, defendant moved to dismiss the conspiracy count because he claimed the evidence showed two conspiracies, as there was no meeting of the minds as to one The trial judge judge agreed and compelled the government to choose which one of the conspiracies it would prove. *Id* at 1034 The Second Circuit disagreed with the analysis of the trial court, explaining that the fact that there were two buyers from one supplier did not necessarily mean that there were two conspiracies *Id* at 1035.

> or transactions connected together or constituting parts of a common scheme or plan.' Defendant thus could in no event have been prejudiced by the failure of the indictment to charge two conspiracies rather than one.

Id. at 1035. Given the above law, the *Sir Kue Chin* court then provided the factual basis for its ruling, stating that "the evidence supported the conclusion that appellant was consciously acting as part of a single conspiracy of which he, himself, was the hub." *Id.* at 1035.

It is at "the hub" where, it is respectfully submitted, the *Sir Kue Chin* analysis parts company with this case on the facts. The evidence in this case as demonstrated above, shows that petitioner was not at the hub of an overarching conspiracy. *Also United States v. Corey*, 566 F.2d 429 (2d Cir. 1977) (concerning postal fraud which essentially tracks the reasoning of *Sir Kue Chin* to arrive at the same conclusion). *Id.* at 431, n.3 (citing *Sir Kue Chin*, 534 F.2d at 1035).

It is on the issue of improper merger of elements with regard to a prosecution for importation, that *Sir Kue Chin*, parts company with the present case on the law. Where more than one element is required to demonstrate a defendant's guilty participation in a conspiracy there is a risk that proving multiple conspiracies will spread the elements over more than one criminal activity. The need to safeguard against the merger of proofs across multiple conspiracies regardless of whether or not one defendant is on trial was not considered by *Sir Kue Chin*.

Thus, *Sir Kue Chin*, the standard-bearer for rationalizing a lack of prejudice to a single defendant in

a case potentially concerning multiple conspiracies in an Indictment in a single-defendant conspiracy case is misplaced. *Cf.*, *United States v. Kapirulja*, 314 Fed. Appx. 337, 340-341 (2d Cir. 2008)(appropriateness of a multiple conspiracy charge in a single defendant mail and health fraud conspiracy was implicitly recognized by the Second Circuit). And, it is misplaced in this case where distinct conspiracies were presented to the jury in each of which defendant was not a hub and was not in control and each juror was permitted to choose just one upon which to find defendant guilty.

CONCLUSION

For the reasons set forth above, the Petition should be granted.

Respectfully submitted,

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Counsel of Record
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Attorney for Petitioner

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Filed September 22, 2009

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2USCOURTS.GOV). IF NO COPY IS SERVED BY REASON OF THE AVAIL-

ABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 22nd day of September, two thousand and nine.

Present:

GUIDO CALABRESI,
RICHARD C. WESLEY,
Circuit Judges,

CHRISTOPHER F. DRONEY*
Judge.

No. 08-1080-cr

UNITED STATES OF AMERICA,
Appellee,

—v.—

ALVARO ARDILA ROJAS,
ANDRES CAJIAO BARBARENA,
ALSO KNOWN AS TEMO,
Defendants,

* The Honorable Christopher F. Droney, United States District Court for the District of Connecticut, sitting by designation

MANUEL FELIPE SALAZAR-ESPINOSA,

Defendant-Appellant.

For Appellee:

IRIS LAN, Assistant United States Attorney, of counsel (Anirudh Bansal and Guy Petrillo, *on the brief*) for Lev L. Dassin, Acting United States Attorney for the Southern District of New York, New York, N.Y.

For Defendant-Appellant:

LINDA GEORGE, Hackensack, N.J.

UPON DUE CONSIDERATION of this appeal from a judgment entered in the United States District Court for the Southern District of New York (Kaplan, *J.*), it is hereby ORDERED, ADJUDGED, AND DECREED that the judgement of the District Court is AFFIRMED.

Defendant appeals from his conviction entered by the United States District Court for the Southern District of New York (Kaplan, *J.*). We assume the parties' familiarity with the facts, procedural history, and scope of the issues presented on appeal.

Defendant argues: (1) the District Court erred in admitting post-arrest statements because (a) his untimely motion to suppress should have been considered, (b) the statements were taken in violation of his right to counsel, and (c) the statements constituted impermissible evidence of prior bad acts; (2) the District Court erred by denying leave to depose a foreign witness; (3) the Government violated his constitutional rights by not disclosing information about a Government witness; (4) there was insufficient evidence to establish guilt; (5) the jury was improperly instructed in light of the possibility of multiple conspiracies; and (6) the District Court's forfeiture calculation was incorrect. We affirm for substantially the reasons expressed by the District Court. To the extent some of these arguments, e.g. the jury instruction about conspiracy, were properly raised before us in the first instance, we find them to be unavailing. *See United States v. Medina*, 944 F.2d 60, 64 (2d Cir. 1991).

We have reviewed all of Appellant's claims and find them meritless. Accordingly, the judgment of the District Court is AFFIRMED.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: /s/ RICHARD ALCANTARA
Richard Alcantara, Deputy Clerk

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk

by /s/ [ILLEGIBLE]
DEPUTY CLERK

U.S. DISTRICT COURT
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

Notice of Electronic Filing

The following transaction was entered on 9/11/2007 at 9:29 AM EDT and filed on 9/10/2007

Case Name: USA v. Salazar-Espinosa et al

Case Number: 1:05-cr-517

Filer:

Document Number: 99

Docket Text:

ORDER as to Manuel Felipe Salazar-Espinosa. Defendant's motion for judgment of acquittal or a new trial is without merit and is denied in all respects. (Signed by Judge Lewis A. Kaplan on 9/10/07)(bw)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Date Filed: 3/3/08

Case Number: 1:(S3)05CR517-01(LAK)
USM Number: 59264-054
Linda George, Esq. (201)487-5225
Defendant's Attorney

UNITED STATES OF AMERICA

—v—

MANUEL FELIPE SALAZAR-ESPINOZA

JUDGMENT IN A CRIMINAL CASE

THE DEFENDANT:

pleaded guilty to count(s) (S3)One, (S3)Two, (S3)Three

pleaded nolo contendere to count(s) _____ which was accepted by the court.

✓ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC 963	Narcotics Importation Conspiracy	7/26/2005	(S3) One
21 USC 959(a) & (c), 960(a)(3) & 960(b)(1)(B)(ii)	Distribution of Narcotics with Intent to Import	7/31/2005	(S3) Two
18 USC 1956(h)	Money Laundering Conspiracy	5/31/2005	(S3) Three

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

✓ Count(s) All Open is ✓ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and specia. assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

2/5/2008
Date of Imposition of Judgment

/s/ Lewis A. Kaplan
Signature of Judge

Hon. Lewis A, Kaplan, U.S.D.J.
Name and Title of Judge

March 3, 2008
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

360 Months on Counts (S3)One and (S3)Two, and 240 months on Count (S3)Three, the terms to run concurrently.

✓ The court makes the following recommendations to the Bureau of Prisons:

That consistent with the defendant's security classification, that the defendant be designated to a facility either in the South East Region or in the state of Florida.

✓ The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ at _____, with a certified copy of this judgment.

_____
United States Marshal

By _____
Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

5 Years on Counts (S3)One and (S3)Two, and 3 years on Count (S3)Three, the terms to run concurrently.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

✓ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

✓ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if

The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall follow all directions of the Bureau of Citizenship and Immigration Services in any proceedings it may institute.

If the defendant is removed or deported from the United States, he shall not reenter the United States illegally.

The defendant shall report to the nearest probation office within 72 hours after he is released from custody.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 300	$	$

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(1), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$ 0	$ 0	

Restitution amount ordered pursuant to plea agreement $_____

The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution,

the interest requirement for the fine restitution is modified as follows:

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ✓ Lump sum payment of $ 300 due immediately, balance due

not later than _____ , or
in accordance C, D, E, or F below; or

---

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or *after* September 13, 1994, but before April 23, 1996

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or ,

D Payment in equal (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g. 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall he applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Additional Forfeited Property

$50,000,000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Date Filed: Jul. 26, 2005
S3 05 Cr. 517(LAK)

UNITED STATES OF AMERICA,

—v.—

MANUEL FELIPE SALAZAR-ESPINOSA,
a/k/a "HOOVER,"

Defendant.

INDICTMENT

COUNT ONE
(Narcotics Importation Conspiracy)

The Grand Jury charges:

1. From at least in or about 2002 up to and including on or about July 26, 2005, in the Southern District of New York and elsewhere, MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, and others known and unknown, unlawfully, intentionally, and knowingly did combine, con-

spire, confederate and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of said conspiracy that MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, and others known and unknown, would and did import into the United States from a place outside thereof a controlled substances containing a detectable amount substance, to wit, five kilograms and more of mixtures and substances containing a detectable amount of cocaine in violation of Sections 812, 952(a) and 960(b)(1)(B)(ii) of Title 21, United States Code.

3 It was further a part and an object of said conspiracy that MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, and others known and unknown, would and did distribute a controlled substance, to wit, five kilograms and more of mixtures and substances containing a detectable amount of cocaine, knowing and intending that such substance would be unlawfully imported into the United States or into waters within a distance of 12 miles of the coast of the United States, in violation of Sections 812, 959(a), and 960(b)(1)(B)(ii) of Title 21, United States Code.

Overt Acts

4. In furtherance of said conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed:

a. In or about 2002, MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, and a co-conspirator not named as a defendant herein

discussed the transportation of approximately $8,000,000 in proceeds from a shipment of cocaine that had been imported into the United States.

b. In or about April 2005, in Panama, MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, and co-conspirators not named as defendants herein possessed approximately 2,500 kilograms of cocaine destined for Mexico en route to the United States.

c. On or about May 23, 2005, MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, traveled to Cali, Colombia to recruit pilots for the purpose of transporting 5,000 kilograms of cocaine destined for New York.

d. On or about July 21, 2005, in Panama City, Panama, at the direction of MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, co-conspirators not named as defendants herein concealed and stored approximately 1,555 kilograms of cocaine destined for Mexico en route to the United States.

(Title 21, United States Code, Section 963.)

COUNT TWO
(Distribution of Narcotics with Intent to Import)

The Grand Jury further charges:

5. From at least in or about April 2005 up to and including in or about July 2005, in Panama, MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, distributed a controlled substance, to wit, five kilograms and more of mixtures and sub-

stances containing a detectable amount of cocaine, and aided and abetted such distribution, knowing and intending that the substance would be unlawfully imported into the United States, or into waters within a distance of 12 miles of the coast of the United States.

(Title 21 United States Code, Sections 959(a) and (c), 960(a)(3) & 960(b)(1)(B)(ii) and Title 18, United States Code, Section 2).

COUNT THREE
(Money Laundering Conspiracy)

The Grand Jury further charges:

6. From in or about 2002, up to and including in or about May 2005, in the Southern District of New York and elsewhere, MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, and others known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Section 1956 (a)(1)(B) of Title 18, United States Code.

7. It was a part and an object of the money laundering conspiracy that MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, and co-conspirators not named as defendants herein, in an offense involving and affecting interstate and foreign commerce, knowing that property involved in certain financial transactions, to wit, the receipt, custody and transfer of United States currency which represented the proceeds of some form of unlawful activity, unlawfully, wilfully, and knowingly would and did conduct and attempt to conduct financial transactions, which in fact involved the

proceeds of specified unlawful activity, to wit, narcotics trafficking, knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity, in violation of Section 1956(a)(1)(B)(i) of Title 18, United States Code.

Overt Acts

8. In furtherance of said conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed:

a. In or about 2002, MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, and a co-conspirator not named as a defendant herein discussed the transportation of approximately $8,000,000 in proceeds from a shipment of cocaine that had been imported into the United States.

b. From in or about 2002, up to and including in or about May 2005, MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," the defendant, and co-conspirators not named as defendants herein shipped, on a weekly basis, multi-million ties of drug proceeds from New York to Mexico and [illegible] 8, United States Code, Section 1956(h) and 2.)

FORFEITURE ALLEGATION (Narcotics)

As a result of committing one or more of the [illegible] offenses alleged in Counts One and Two of [illegible], MANUEL FELIPE SALAZAR-ESPINOSA, a/k/a "Hoover," [illegible] shall forfeit to the United States, pursuant to 21 [illegible] any and all property

constituting and derived from [illegible] that the said defendant obtained directly and [illegible] a result of the said violations and any and all [illegible] and intended to be used in any manner or part to [illegible] facilitate the commission of the violations alleged [illegible] and Two of this Indictment including, but not [illegible] following: a sum of money equal to approximately [illegible] United States currency, representing the amount of [illegible] as a result of the controlled substance [illegible] which the defendant is liable.

Substitute Assets Provision

If any of the property described above as being [illegible], as a result of any act or omission of the

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(S3) 05 Cr. 517 (LAK)

UNITED STATES OF AMERICA,

—v.—

MANUEL FELIPE SALAZAR-ESPINOSA,

Defendant.

EXCERPTS FROM THE TRANSCRIPT OF TRIAL JUNE 11-15, 2007

Before:

HON. LEWIS A. KAPLAN,

District Judge

APPEARANCES

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York

ANIRUDH BANSAL,
IRIS LAN,
Assistant United States Attorneys

LINDA GEORGE, ESQ.
LAURENCE DESIND, ESQ.
Attorneys for Defendant

INTERPRETERS:

FRANCISCO OLIVERA
PAULA GOLD

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* * *

[17] (In open court; jury present)

THE COURT: All right. Counsel, you have to approach.

(At the side bar)

THE COURT: For the record, I've just shared with counsel a note from alternate No. 1, rather, Ms. Tutson. I believe it's alternate No. 1. She's written to the effect that she has to leave early tomorrow because she has child visitation at five o'clock on Tuesdays. What do you want to do, folks?

MR. BANSAL: We were planning on staying till 4:30, Judge?

THE COURT: Yes.

MR. BANSAL: If she can be asked if she left at 4:30, if she can make it there. Did she even say that?

THE COURT: She said she has to leave early. She can also leave a little later. That is to say, to me, it's excusing her or we don't excuse her.

MR. BANSAL: Well--

THE COURT: And I must say, no matter how many times you ask jurors, there's also somebody who doesn't pay any attention.

MS. GEORGE: I mean, I'm okay with excusing her.

MR. BANSAL: We have a panel, Judge. We have a jury, and I have a strong conviction to keep the jury as it is.

THE COURT: All right. We're going to keep it.

* * *

[26] hours. So that's why I mention that.

The trial is going to begin in about 60 seconds. The government gets to make an opening statement, which is sort of like coming attractions at the movies. They will explain to you what they think the evidence is going to prove. The defense has the right to make an opening statement, but they're not obliged to do so. I'm not sure what they'll do here. Just bear in mind the opening statements are not the main attraction. They are not evidence. The evidence comes later, but it's to help you follow the evidence.

The government then goes first and presents its witnesses and other evidence. The defense gets to cross-examine. When the government is all done, they change places, figuratively speaking. The defense has the right but, as I say, not the obligation to present evidence. The government gets to cross-examine when that's all done. The government has the right, in general, to present a brief rebuttal to answer any new points raised on the defendant's case. Sometimes it does. Sometimes it doesn't. No way of predicting in advance what will happen.

When that is all done, the lawyers and I confer with respect to the jury instructions that I will give you, and once the charge is, as we say, settled, then the lawyers make their closing arguments, I'll instruct you on the law, and then you will get the case to decide.

* * *

[27] That is the way it will go down, and without further ado, we'll hear the opening statement from the government, Ms. Lan.

MS. LAN: Thank you, your Honor. Good afternoon. On May 23, 2005, this man, Manuel Felipe Salazar-Espinosa, the defendant, known to his friends as Hoover Salazar, landed in a chartered plane in an airport in Colombia, in South America.

Hoover Salazar had been busy in the past few weeks, busy planning the movement of massive shipments of cocaine headed for the United States. Just one week earlier, the defendant had met in Mexico City with leaders of a Mexican drug cartel. They wanted the defendant's help, help that he had given to them many times before. The Mexican cartel leaders wanted the defendant to help find a pilot to fly a shipment of 5,000 kilograms of cocaine, 5 tons of cocaine, from Colombia to Mexico. Once the cocaine got to Mexico, it would then be smuggled into the United States and make its way here, right here to New York City.

The defendant agreed to find a pilot for the cartel, and on May 23rd of 2005, one of the defendant's reasons for being back in Colombia was to find a pilot to fly that 5-ton shipment of cocaine. Now, while he was helping to orchestrate this 5-ton shipment of cocaine, the defendant was also busy helping to

orchestrate another shipment. This shipment weighed a little over 1.3 tons, 1,364 kilograms, and it was also headed **[28]** towards the United States. The plan was to hide all that cocaine in the arm of a huge red construction machine, a crane.

And this was that crane. The plan was to ship the cocaine in this red crane from Panama to Mexico, and once in Mexico, a Mexican cartel would take possession of the cocaine and smuggle it into the United States.

The defendant, Hoover Salazar, had been in this business for years, and it had been good to him and he had never been caught. But on May 23rd of 2005, when he landed in a plane in Colombia, things were about to change.

What the defendant didn't know is that, while he was planning that 1.3-ton shipment of cocaine, the one hidden in the huge red crane, he was being taped, taped by an informant working with the United States law enforcement. And the defendant didn't know that, based on that investigation, he had been indicted, indicted right here in the Southern District of New York for narcotics trafficking offenses. And as a result, the United States Government had made a request with the Colombian government to arrest the defendant in Colombia so that he could be extradited, which just means brought to the United States to face his charges.

And on May 23rd of 2005, members of an elite unit of Colombian law enforcement were waiting at an airport in Colombia to arrest Hoover Salazar, the defendant. The defendant was arrested in Colombia on May 23rd of 2005, and **[29]** after being arrested, the defendant was read his Miranda rights, and he confessed. He confessed to participating in a con-

spiracy that shipped 5 to 7 tons of Colombian cocaine to the United States every single week, and he confessed to laundering huge amounts of cash made by this conspiracy. And we're talking about millions of dollars here, 12 to 14 million dollars every single week. And that's why we're all here today, ladies and gentlemen, the defendant's participation in a sprawling international conspiracy to import tons and tons of Colombian cocaine into the United States and to launder tens of millions of dollars in drug money from the United States back down to Colombia.

Ladies and gentlemen, in the next few minutes, I'm going to tell you a bit more about this case and what the defendant did and how we expect to prove it beyond a reasonable doubt, but before I do that, I'd like to take just a brief moment to reintroduce myself. My name is Iris Lan. I'm an assistant United States attorney here in the Southern District of New York. Seated next to me at counsel table is Anirudh Bansal, who's also an assistant United States attorney. It is our privilege and it is our responsibility to represent the United States in this case.

Seated at the end of the table is Moire Dobransky, who is a paralegal at the United States Attorney's Office. And assisting us in this case will also be a special agent. He's **[30]** not here right now, but he'll be here later in the trial. His name is Eric Triana, and he's with the Drug Enforcement Administration, the DEA, which is the federal agency charged with enforcing the federal drug laws. And together, we'll be presenting the evidence to you in this case.

Now, before I get to what the evidence will show, I'm just going to take a very brief moment to discuss the charges in this case. The defendant is charged in

three counts. First, the defendant is charged with being a member of a conspiracy, an agreement, to import cocaine into the United States.

Second, the defendant is charged with distributing cocaine, knowing or intending that that cocaine would be imported into the United States. And that charge is referring to the 1.3-ton cocaine found in that red crane.

And finally, the defendant is charged with being a member of a conspiracy, again, an agreement, to launder drug money.

So those are the charges in this case. Now, what will the evidence show? Well, during this trial, you'll learn that by 2002, the defendant had already established himself as a major international cocaine trafficker. He had people working for him and with him in many different countries. He needed these people to help move cocaine from Colombia to the United States and to move drug money from the United States back down **[31]** to Colombia.

And it was during this time that the defendant met a money launderer named Alvaro Ardila, and in 2002, Ardila began moving millions of dollars in cash for the defendant, moving it from Mexico to Colombia. All of that money was United States currency, and all of it was profits from selling drugs.

In 2004, the defendant and Ardila arranged to smuggle about 30 kilograms of cocaine into the United States, into Los Angeles. And in the spring of 2005, the defendant had meetings with Ardila and other people to talk about another cocaine shipment, a shipment headed to the United States. This one wasn't 30 kilograms. This one was over a ton. The plan was to hide that cocaine in the arm of a huge red crane in Panama, again, this crane. And

here is the arm. And the plan was to take that crane from Panama and smuggle it to Mexico. And once in Mexico, a Mexican cartel would take it into the United States.

Now, after the plan was in place, the defendant put it into action. He arranged for people to get the cocaine. He arranged for people to load it in the red crane in Panama City. And they planned to ship that cocaine in the red crane from Panama to Mexico on its way into the United States. But as it turned out, Panama was the end of the line for the shipment, because you'll learn that Panamanian police found and seized the crane in the warehouse in Panama City.

[32] You'll learn that the defendant was arrested several weeks before the police found the cocaine in the red crane, but that did not stop him from following through with this deal. You'll learn that the defendant continued to orchestrate the shipment from jail. He continued to give directions to his workers over the phone, and they continued to work on his behalf.

Now, as I mentioned earlier, the defendant did more than just smuggle cocaine. As a part of his cocaine business, he laundered the drug dollars generated by the business. This wasn't somebody standing on a street corner selling drugs. The defendant was at the center of a large-scale business dedicated to importing immense quantities of cocaine, and it was a successful business, so successful and so profitable that he had to hide that money that he was pulling in.

[33] So he hid the cocaine, the profits, by having cash smuggled from New York to Mexico to Colom-

bia, millions of dollars in cash. And remember, that is what the defendant himself had confessed to.

So that is what the evidence will show.

Now, how are we going to prove it? Well, first, you will hear live testimony of law enforcement witnesses and testimony of one of the defendant's drug partners. Most importantly, you will hear the defendant in his own voice discussing the shipment of cocaine in the red crane. And you will also hear about other deals he has done from that recording.

You will also hear from the agents who witnessed Hoover Salazar's detailed confession participating in a massive international cocaine and money laundering conspiracy. You will hear from a federal agent who was investigating the defendant and his drug organization. You will hear that the agent was working with an informant and that he gave the informant the recording device and sent that informant to record various meetings with that device. The informant won't be testifying at this trial but you will hear from another person who was at this meeting.

Even more importantly, you will hear the defendant in his own voice openly discussing the crime that he is charged with. This was during one of the meetings recorded by the **[34]** informant in Mexico in the spring of 2005. In that meeting the defendant Hoover Salazar described the cocaine to his co-conspirators. He said it was red. He said it was as large as a tractor trailer. He said the crane had an arm, and he said that the arm could hide a lot of cocaine.

The defendant also described how the red crane loaded with all that cocaine would be stored in a warehouse and then shipped northward from Panama. You will hear that one of the options was to send the cocaine to Europe. And you will learn the

cocaine was to enter or be imported into the United States first.

You will also hear from Panamanian police officers who discovered the defendant's shipment of cocaine in the red crane in Panama. And just as the defendant described in the recorded meeting, the crane was red. It was as large as a tractor trailer. It had an arm and the arm was filled with cocaine. And you will hear from the police how they got the cocaine out of the arm of the red crane. There were over 1,300 packages of cocaine weighing over 1.3 tons in total.

You will see photos and video clips of the cocaine that was seized and you will learn that the cocaine was carefully tested and like other drugs seized in Panama, it was burned after being stored for about a month.

You will also hear from one of the defendant's drug and money laundering partners, Alvaro Ardila. Ardila laundered **[35]** millions of dollars for the defendant by moving cash from Mexico to Colombia, cash from drug deals, cash in the form of United States currency. You will learn how Ardila hired people to fly airplanes filled with cash and how he hid that cash so that law enforcement would not be able to discover and to seize it.

In 2004 Ardila and the defendant began orchestrating cocaine shipments together too and in 2005 Ardila was at the very meeting where the defendant discussed the shipment of cocaine in the red crane. The tape recording of the meeting is clear by itself. But Ardila will make the defendant's words even clearer to you.

Ardila will explain that the plan was to ship the cocaine in the red crane from Panama to Mexico. He

will also explain to you how the cocaine would then be handed over to another separate Mexican organization for shipment to the United States. You will learn that the reason why the cocaine was handed off to another organization is that the defendant, and his drug partners, were afraid of getting caught by United States authorities.

All right, I want to be clear about Ardila. He is what is called a cooperating witness. He is testifying because he is hoping that if he tells the truth he will get less time in jail. But I want you to listen closely to his testimony because you will see that his testimony is supported by all the

* * *

[106] occasions. Correct?

A. The 23rd and the 26th, yes, ma'am.

Q. And you were looking for possible proactive work. Is that correct?

MR. BANSAL: Objection.

THE COURT: Sustained.

Q. You were attempting to get information to broaden your investigations. Is that correct?

MR. BANSAL: Objection.

THE COURT: Sustained as to form.

Q. You asked questions, and the answers he gave you you stated broadened your investigation. Is that correct?

MR. BANSAL: Objection.

THE COURT: Sustained. Look, you were there to get from him whatever information that he could

provide you about areas within your responsibility. Right?

A. Your Honor, I was there to document anything he said.

THE COURT: Right. Okay.

Q. And he told you some things that neither you nor anyone else has corroborated to date. Is that correct?

MR. BANSAL: Objection to the "nor anyone else."

THE COURT: Sustained.

Q. Did you corroborate anything that he said?

A. No, ma'am.

Q. And he didn't want to cooperate, because he walked out of **[107]** the end of the last interview on the 26th. Is that correct?

MR. BANSAL: Object to the form.

THE COURT: Sustained.

Q. Did he want to cooperate?

MR. BANSAL: Objection.

THE COURT: Sustained.

Q. Did he say to you at any point in time that he wanted to cooperate?

A. I don't know if he used those words, ma'am, but he basically talked a lot about his activities, which has been documented in the report.

Q. And did he leave on the 26th after the last debriefing? He just left out of the room I think you stated. Correct?

A. Once I asked him about when was the last time that he actually shipped—sent money from the United States to Colombia, he became somewhat agitated and decided to terminate the interview, and the interview was terminated.

Q. And during this interview on the 26th, he made no admissions about anything in that indictment. Isn't that correct?

MR. BANSAL: Objection.

THE COURT: Sustained. He said he hasn't read the indictment, so how could he tell?

Q. You never read the indictment at all?

A. No, ma'am.

[108]Q. And you didn't know what he was charged with?

A. I knew there was a provisional arrest warrant for violation of narcotics laws of the United States, and I knew that an indictment was returned here in the Southern District of New York.

Q. In your presence were any questions asked to him concerning any of the activities of the drugs that were seized in Panama?

A. No, ma'am.

MS. GEORGE: I have nothing further, your Honor.

THE COURT: Thank you. Redirect, Mr. Bansal.

MR. BANSAL: Thank you.

REDIRECT EXAMINATION BY MR. BANSAL:

Q. Good morning, Special Agent Lowe.

A. Good morning, sir.

Q. Ms. George asked you some questions about what, if anything, you had done to follow up on some of the statements Mr. Salazar had made to you. Do you remember those questions?

A. Yes.

Q. Were there other agents in New York conducting the investigation of Mr. Salazar?

A. That is correct.

Q. And did you pass those statements that Mr. Salazar made on to those other agents?

A. Yes.

* * *

[133]A. Yes, I did do.

Q. Does it have your name on it?

A. Yes.

Q. Is that a CD created from the recording device that you got back from Mr. Guzman on or about July 22, 2005?

A. Yes, it is.

MR. BANSAL: The government offers 12, your Honor.

MS. GEORGE: No objection, your Honor.

THE COURT: 12 is received.
(Government's Exhibit 12 received in evidence)

MR. BANSAL: Judge, I would like to read a stipulation with respect—excuse me, the wrong one.

Q. You mentioned that you were in Panama on July 22, 2005. What about July 21, 2005, where were you then?

A. Same place, Panama City, Panama.

Q. And what were you doing in Panama?

A. I was in Panama to seize a load of cocaine.

Q. Were you assisting a foreign law enforcement agency for that?

A. Yes.

Q. Which foreign law enforcement agency was that?

A. The Panamanian PTJ.

Q. Is that an acronym for the Technical Judicial Police of Panama?

A. Yes.

* * *

[160]A. My complete name is Alvaro Anon Ardila-Rojas. They also call me Mickey.

Q. And how old are you?

A. 42 years old.

Q. What country—

MS. GEORGE: Your Honor, I'm having trouble hearing him. If he can maybe speak a little closer to the microphone. Thank you.

Q. Sir, how old are you?

A. 42 years old.

Q. And what country were you born in?

A. Colombia.

Q. Until July of 2005, what countries have you lived in?

A. In Colombia, in Mexico.

Q. Until when did you move to Mexico?

A. Beginning of 2004.

Q. Where do you currently live?

A. (In English) In MDC Brooklyn.

Q. And is that a correctional facility?

A. Yes, ma'am.

Q. And when were you arrested?

A. July 21st of 2005.

Q. And for what were you arrested?

A. For a drug conspiracy in Panama.

Q. Were you also arrested for something else?

[161]A. For money laundering.

Q. And where was that drug conspiracy?

A. In Panama, in Mexico.

Q. Where were you arrested—I'm sorry—is the question?

A. In Panama.

Q. And what was going on in Panama in July of 2005 that resulted in your arrest?

A. A drug shipment.

Q. Who were some of the people involved in that drug shipment?

A. Jose Guzman, Jorge Asaf, Diego Ramirez, Mr. Salazar, and myself.

Q. Who was the head of the group?

A. Mr. Salazar.

Q. Do you see Mr. Salazar sitting in the courtroom here today?

A. Yes, ma'am.

Q. Could you please describe where Mr. Salazar is sitting and what he's wearing?

A. He's right there. He has a white shirt, and he's wearing glasses.

THE COURT: Indicating the defendant.

Q. Now, where was the defendant when the drug shipment was seized?

A. He was arrested at the Combita jail in Colombia.

Q. Who was acting on his behalf while the defendant was in jail?

[162]MS. GEORGE: Objection as to leading.

THE COURT: Sustained as to form.

Q. Was anybody acting on his behalf?

A. Jorge Asaf.

Q. Anybody else acting on his behalf?

A. Diego Ramirez and el Caballo.

Q. And Jorge Asaf, who is he?

A. He's a person very close to Mr. Salazar. He's like his son.

Q. Does Jorge Asaf go by any other names except for Asaf?

A. El Pato.

Q. And who is Diego Ramirez?

A. One of Mr. Salazar's nephews.

Q. I'm going to show you a photograph that's been premarked as Government Exhibit 80 for identification. Do you recognize the person in the photo?

A. Yes, ma'am.

Q. Is it a fair and accurate depiction of the person you have seen before?

A. Yes, ma'am.

Q. Who is it?

A. El Pato, Jorge Asaf.

MS. LAN: Your Honor, we offer Government Exhibit 80.

THE COURT: Received.

(Government's Exhibit 80 received in evidence)

[163]Q. Now, I want to ask you more about your involvement with the defendant in committing crimes, but first I'd like to ask you a little bit more about your background and how you came to testify here today. Okay?

A. Yes, ma'am.

Q. How far did you go in school?

A. High school.

Q. Since leaving high school, could you describe very briefly what kind of legitimate jobs you have held.

A. I worked for Volvo in heavy machinery. I also worked for the state taxation office in Cundinamarca. And then, from then on, I also owned my own companies like Speed Cargo, Commercial Juanita, Online, Airtrans, Panavia Air Cargo, and that's it.

Q. What kind of companies were these?

A. Movement of international cargoes.

Q. And what kind of cargo did your company ship?

A. These are international cargoes that agencies—international agencies get at a world level.

Q. Other than working in legitimate jobs, have you also earned money by committing crimes?

A. Yes, ma'am.

Q. What kind of crimes?

A. Laundering money, and also drug dealing, helping in the drug deal.

Q. Okay. Let's talk about your involvement in each of these **[164]** things. First, what do you mean by money laundering?

A. Movement of cash from one country to another in order not to be detected.

Q. And how was this money generated?

A. From illegal drug dealings.

Q. And how was the cash moved?

A. It was disguised in shipments that were imported and exported from Colombia in order not to be detected by any authorities of any country.

Q. Could you describe very briefly how it was hidden inside of the cargo.

A. Preferably, wooden items were chosen, and the money was camouflaged inside those items like home treadmills, and also some magnetized type of paper was placed so that the x-ray machines wouldn't detect the money. It was exported legally through the customs of that country by air towards Bogota, Colombia. And in Colombia, that type of merchandise was also legally imported.

Q. Okay. And approximately what year did you start laundering drug money?

A. Approximately towards the end of '93, beginning of '94.

Q. And approximately when was the last time you laundered money?

A. Until July of 2005.

Q. Approximately how much money were you involved in

* * *

[236] and the other one was to continue to the United States with the machine so that an American company could put together several machines and then send them to Europe.

Q. Let's just talk about that a little bit.

For both of those options, was the cocaine to go from Panama to Mexico?

A. Yes, ma'am.

Q. And for one of those options what would happen once the crane got to Mexico?

A. In one of those options the drugs were going to be taken out in Mexico and the empty crane would be sent to the United States to sell it back to Panama and then to do the deal over again.

Q. And then what would happen to the drugs that were taken out?

A. They would be sold to Mexican cartels so they could be sent to the United States.

Q. And the other option, what would happen once the crane with the cocaine got to Mexico?

A. It would be sent by train to the United States to include it with another crane shipment to other countries and they would be sent to other European countries for other options which existed in those European countries.

Q. And for both of these options, who was responsible for transporting the crane with the cocaine from Panama to Mexico?

[237] A. Caballo.

Q. Who was he working with to assume the responsibility for this?

A. With Mr. Salazar.

Q. And who was in charge of the cocaine shipment while it was in Panama?

A. Temo.

Q. Who was Temo?

A. A person who works for Mr. Salazar.

Q. What was his role in Panama?

A. He managed a warehouse in Panama and he did it so that he could receive the drugs and then put it in the machines inside the warehouse.

Q. And you mentioned a person name Caballo. Who is that?

A. Yes.

Q. Who is that?

A. He is a person who is in the drug trafficking business in Mexico. I don't know him.

Q. You mentioned that once in Mexico somebody else would take over the responsibility for the cocaine, right?

A. Yes.

Q. What kind of group would take over?

A. Mr. Guzman said that he was going to receive the drugs there so that he could sell the drugs.

Q. Sir, I just want to direct your attention to the drugs that **[238]** were in the crane.

A. All right.

Q. Who would take responsibility of those drugs in Mexico?

A. Caballo.

Q. And who would he hand those drugs off to?

A. I don't know.

Q. What kind of organization would he hand it off to?

A. A Mexican cartel.

Q. What was your understanding of why a Mexican cartel would take those drugs?

A. Because they are the ones in charge of the American market and we don't like to sell to the United States so we can avoid problems.

Q. Based on your understanding did both of those options require the cocaine to come into the United States?

A. Yes.

MS. LAN: Your Honor, at this point I would like to ask the jury binders with the transcripts that have already been entered into evidence be passed out because we are going to start going over a couple of recordings.

THE COURT: Okay.

MS. GEORGE: May we approach on an issue? I have an objection in part to some testimony.

THE COURT: I can't hear you.

MS. GEORGE: Can we approach on an issue? I have an

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[278](At the side bar)

MS. GEORGE: My objection is to the solicitation of what Guzman said and the interpretation of what Guzman said, because Guzman—whatever he said wearing a body wire is testimonial. He's a confidential informant. So I don't have an opportunity to cross-examine him. So that's why I'm objecting to

whatever he says about Guzman on the basis of hearsay.

MS. LAN: They both are, again, coconspirator statements, but in addition, it goes to the nature of the conspiracy and what it's all about. This crane shipment is at the center of Count Two, and therefore, how that shipment is structured goes to the very heart of the conspiracy.

THE COURT: Why is that coconspirator?

MS. GEORGE: Because he's an informant, and whatever he is saying on a body wire is testimonial. He knows—and I'm looking at the U.S. v. Saget case. He knows that what he's going to be saying is going to be used—

THE COURT: Can I look at—

MR. BANSAL: Can I ask how relevant the charge—

THE COURT: Just a moment.
(Pause)

THE COURT: So I've looked at what you have highlighted here, Ms. George. Where does it say anything somebody says on a body wire is testimonial?

* * *

[303] paying something to Mr. Salazar for whatever you owe him. Isn't that correct?

A. Yes, ma'am.

Q. Did this drug transaction involve Mr. Salazar?

A. Are you talking about the drug transaction from which I obtained the 500,000 Euros?

Q. I'm talking about the drug transaction on 3-17-05.

A. No.

Q. So this just reflects how you're getting money and paying it back to him, correct, not that he's involved in the scheme?

A. Exactly.

Q. Now, I'll move on to the meetings that took place. You first met with Mr. Guzman involving Mr. Salazar in or around December of 2004 or January of 2005. Is that correct? Do you remember when?

THE INTERPRETER: I'm sorry. Repeat the last part of the question. Remember—

Q. Do you remember when?

A. No. I don't remember exactly.

Q. Well, you knew Mr. Guzman from before. Correct?

A. Yes, ma'am.

Q. And you've known him for many years. Correct?

A. Yes, ma'am.

Q. And you remember when you first spoke to him about talking to Mr. Salazar?

[304] A. We met once with Mr. Salazar in Bogota.

Q. And do you know when that was?

A. No. I don't remember the exact date.

Q. Well, was it in 2004, or was it in 2005?

A. No, way before.

Q. Was it while you were still living in Bogota?

A. Yes, ma'am.

Q. So my question is, when you moved to Mexico, when was the fist time that you met with Mr. Guzman to discuss Mr. Salazar?

A. I believe that it was at the beginning of 2005.

Q. Do you remember meeting at a mall in Mexico City, Pabellon Bosques?

A. Yes, ma'am.

Q. And did you tell Mr. Guzman at that meeting that Mr. Salazar was coming from Colombia and he was going to arrive in a couple of days or something like that?

A. Yes, ma'am.

Q. And were you discussing with Mr. Guzman a series of narcotics activities that you wanted to participate in with Mr. Guzman?

A. Yes, ma'am.

Q. Because you have done narcotics transactions with him in the past. Is that correct?

A. Yes, ma'am.

Q. And those transactions in the past had nothing to do with

* * *

[308] A. Yes.

Q. He could burn it for all you cared. Correct?

A. Yes.

Q. As long as he paid for it. Correct?

A. Yes.

Q. Now, when you met at the golf club in April of 2005, was that the first meeting that Mr. Salazar had with Mr. Guzman?

A. It seems that they had met at the airport a month ago or several months before that.

Q. And how do you know that?

A. Because Mr. Guzman and Mr. Salazar told me that they had met.

Q. Did they discuss doing business at the airport that you were aware of?

A. I don't know.

Q. So the meeting at the golf club, was that the first time that you became aware that everyone was going to discuss a drug transaction?

A. Yes.

Q. And there were four of you there. Correct?

A. Yes.

Q. And as a part of the transaction you were going to discuss, was Mr. Salazar's purpose—was his role to oversee the transportation of the drugs from Colombia to Panama?

A. At that time we were talking about the deal but supervise

* * *

[315] transaction of bringing drugs from Colombia up to Mexico?

A. I first started hearing about Caballo because of the negotiations regarding the crane.

Q. Did you ever meet him?

A. No.

Q. Did you ever talk to him?

A. No.

Q. And yet, you stated that he was connected with Mr. Salazar?

A. Because Mr. Salazar spoke about him and also Pato.

Q. Well, did Mr. Salazar say to you Caballo works for me that you made that conclusion?

A. No. It was more that he was working with Caballo.

Q. Who's "he"?

A. Mr. Salazar.

Q. Did Asaf, Pato, work for Caballo?

A. Well, when you speak about work for—I don't know how to explain this—they did deals together. They were negotiating.

Q. So Caballo was independent of Mr. Salazar just as you are independent from Mr. Salazar. Correct?

MS. LAN: Objection.

THE COURT: Sustained. Again, the problem is the word "independent." Let me revise that. I'm going to allow him to answer, but the question of whether this witness thinks they were independent in some undefined sense does not necessarily [316] control the question of whether they were acting jointly as coconspirators as a legal matter. General Motors and Ford are entirely separate companies, but if they agree on the prices that they're going to sell

new cars for, they are legally responsible as coconspirators for price fixing.

MS. GEORGE: Thank you, your Honor.

A. My understanding was that they did business together, but under what conditions I did not know.

Q. Now, you talked about the two options in this deal, and the first option was to be that once the drugs were brought to Mexico, someone would take the drugs and do what?

A. They would sell it.

Q. And where would they sell it, to whom?

A. To people who would buy it there in Mexico.

Q. And prior to the time of your arrest, did you know, sir, to whom these drugs were going to be sold?

A. No.

Q. Prior to your arrest, did you intend that these drugs were sold to anyone specific when they got to Mexico?

A. No.

Q. And is the reason why, sir, because that part of the transportation had not been decided?

MS. LAN: Objection.

THE COURT: Sustained. The question doesn't make sense.

* * *

[328] drugs to the United States, then to Europe, and they were willing to take the risk on three occasions of detection?

A. Mr. Salazar talked about that deal. That is all.

Q. Did that deal make any sense to you?

MS. LAN: Objection.

THE COURT: Sustained.

Q. You had your own transportation company to Europe, correct, a transportation route to Europe, correct?

A. You mean legally or illegally?

Q. Illegally.

A. Yes.

Q. And your route would have been from Mexico direct to Europe, correct?

A. Yes, ma'am.

Q. And you had no risk in Mexico because you testified that you were paying off the people at the port, correct?

A. Yes.

Q. And the only risk would you face under that circumstance was getting the drugs into Europe, correct?

A. Yes.

Q. Under the first scenario of taking a risk in three. Places—

THE COURT: By the "first scenario" you mean the second scenario, right?

Q. I am sorry, by the second scenario, by taking the risk in

* * *

[332]Q. Now, you stated before that you knew Mr. Guzman was negotiating a deal with the United States, correct?

A. Yes.

Q. And did you know when you were discussing this deal with Mr. Guzman that it would be in Guzman's interest to have the drugs go into the United States?

MS. LAN: Objection, your Honor.

THE COURT: Sustained.

Q. Did Guzman ever tell you that because of his negotiations with the government he wanted the drugs to go to the United States?

A. No.

Q. Now, prior to your arrest if you thought the drugs were going to the United States would you have assisted Mr. Guzman in doing that?

A. No.

Q. Now, going briefly through the conversations, and I am not going to go through obviously all of them, but I do have some questions.

When you participated in the conversation on April 29, that took place at the golf club in Mexico, correct?

A. In Cuernavaca.

Q. And in the beginning of the conversation when everybody first met, there was a lot of talk about just familiar talk, correct, who knows who and who did what, correct?

* * *

[341]Q. "THE COURT: Tell me what you did in your own words.

"THE DEFENDANT I knew that some people were planning a drug shipment and I participated in that drug shipment.

"THE COURT: And did you enter into an agreement with them to participate?

"THE DEFENDANT: Yes, sir.

"THE COURT: And did this shipment involve at least 5 kilograms of cocaine and one kilogram of heroin?

"THE DEFENDANT: Yes, sir.

"THE COURT: And did this happen between 2002 and July 26, 2005?

"THE DEFENDANT: Yes, sir.

"THE COURT: And where were the narcotics being transported to?

"THE DEFENDANT: From Panama to Mexico.

"THE COURT: And where, to your knowledge, were they ultimately going to come?

"THE DEFENDANT: What I knew was that it was Mexico but that it was possible that it could get to the United States.

"THE COURT: Does the government—sorry, go ahead.

"MR. SCHNEIDER: If we may have one moment, your Honor.

"THE COURT: Yes.

"THE DEFENDANT: They were coming to the United **[342]** States."

Do you remember that?

A. Yes, ma'am.

THE COURT: And is what you said on that occasion true?

THE WITNESS: Yes, sir.

Q. Now, on that day you first told the court that you "I knew that it was Mexico, the drugs were going to Mexico," correct?

A. Yes.

Q. And after that point the court had asked a question "Does the government—sorry, go ahead," and then Mr. Schneider asked "if we may have one moment, your Honor."

Who is Mr. Schneider, do you remember?

THE COURT: The court takes judicial notice that Mr. Schneider was the prosecutor.

I tell the jury that Mr. Schneider was the prosecutor.

Q. Do you remember what happened when Mr. Schneider asked for a moment?

A. I don't remember exactly, no.

Q. Do you know when Mr. Schneider asked for a moment, did he speak to your attorney off the record?

A. Perhaps but I don't remember it well.

Q. Do you remember if you spoke to your attorney off the record at that point?

A. Perhaps.

[543]Q. You then next said they were coming to the United States, correct?

A. Yes.

Q. Why did you change your mind from—why did you change your statement from it was Mexico but that it was possible to they were coming to the United States?

A. Because if I was going to plead guilty it was because the drugs were going to come here, right?

Q. Before your arrest, sir, did you know the drugs were coming to the United States?

A. When the drugs arrived in Mexico, Mexico is a bridge for the drugs to come into the United States so it most definitely would have gone here to the U.S.

Q. Before your arrest, did you know for a fact that those drugs were going to the United States?

A. They were going to be sold in Mexico.

Q. You have an agreement with the government to cooperate, correct?

A. Yes.

Q. And you entered into that agreement because you pled guilty in three cases, not only one, correct?

A. Yes, ma'am.

Q. Did you tell the judge on March 23, 2007 that those drugs were going to the United States because you wanted to continue and do everything possible to keep your cooperation agreement

* * *

[407]Q. And why is that?

A. We wanted to get more information involving the 5000-kilogram shipment.

MS. LAN: Your Honor, may I have one moment?

THE COURT: Yes.

MS. LAN: Your Honor, we're done.

THE COURT: Thank you. Ms. George.

CROSS-EXAMINATION BY MS. GEORGE:

Q. Agent Cole, regarding this 5,000-kilo shipment that Mr. Salazar said was in process, did you ask him who the receivers would be in Mexico of his drugs?

A. No, ma'am.

Q. Did he tell you who the receivers would be in Mexico for the drugs?

A. No, ma'am.

Q. Did you ask him who the receivers would be in New York for the drugs?

A. No, ma'am.

Q. Did he tell you who the receivers would be in New York for the drugs?

A. No, ma'am.

Q. Did you ask him specifically what route from Colombia he was going to have the drugs take in order to get to Mexico?

A. Specific route, ma'am?

[408]Q. Yes.

A. No.

Q. Did you ask him the type of plane that would be used?

A. We did not.

Q. Did he offer any of that?

A. No.

Q. Now, you indicated that he mentioned the price of drugs in the United States. Correct?

A. Yes, ma'am.

Q. And anyone who would be dealing in drugs, fair to say, would know the price of drugs in the United States. Correct?

A. Yes, ma'am.

Q. And anyone dealing in drugs, fair to say, would know the price of drugs in Mexico. Correct?

A. That's correct.

Q. And they would even know the price of cocaine in Europe. Is that correct?

A. Yes, ma'am.

Q. And so the fact that he gave you an answer to a question as to the price of drugs in New York, does that have any specific significance to you?

THE COURT: Sustained.

Q. When he said that he knew the price of drugs in New York, did he give you any special information about giving that to you?

[409]A. Well, it was a good indicator that he knew the current prices.

Q. Well, you knew that he was dealing in narcotics. Correct?

A. Yes, ma'am.

Q. And you knew that he was not a mule. Correct?

A. Yes, ma'am.

Q. So would it be reasonable that he would know the price of drugs all over?

A. That's reasonable.

MS. LAN: Objection, your Honor.

THE COURT: Sustained. Answer stricken.

Q. When you went to meet with him on May 23rd in Cali, what was the purpose of your going there to talk to him?

A. We went there to see if Mr. Salazar wanted to cooperate with us.

Q. And when you went there to see that, you asked him specific questions to see whether he would be a good cooperator. Correct?

A. Yes, ma'am.

Q. You wanted to see if he was knowledgeable in the field. Correct?

A. Yes, ma'am.

Q. And you asked him certain questions—did you ask him, by the way, what can you do for us?

A. We did.

[410] Q. And is that when he responded about the 5,000-kilo load coming through?

A. In Cali, no.

Q. When did he respond to—

A. In Bogota.

Q. In Bogota?

A. Yes, ma'am.

Q. And in Bogota did you ask him the same thing, what can you do for us?

A. Yes, ma'am.

Q. And is that when he said he could do that?

A. It was part of the questioning. We were trying to see if Mr. Salazar could help us locate some fugitives or inform us regarding any current drug shipments to the United States.

Q. Now, did you know at that time that Mr. Salazar was involved in the transportation of drugs?

A. Yes, ma'am.

Q. And as a transporter, could he, in fact, make those drugs go wherever he wanted them to go?

A. Yes, ma'am.

Q. And if you said to him can you get me drugs in Texas and he was willing to do it, he could make them go to Texas. Correct?

A. If he has the contacts, yes, he can.

Q. And that would be the same with any part of the country. Correct?

[411]A. If they had the contacts, yes, ma'am.

Q. And that's when you were trying to ascertain at that time his value as a cooperator. Correct?

A. At that time we were trying to establish his credibility as a drug trafficker, yes.

Q. And at that time did he tell you anything about a shipment that was going to Panama in a red crane?

A. No, ma'am.

Q. And did he tell you anything at that time about Mr. Ardila?

A. No, ma'am.

Q. Did you ever hear the name Alvaro Ardila?

A. Yes, I have.

Q. And did he at that time tell you anything about a Jose Guzman Morales?

A. No, ma'am.

Q. Did he tell you anything about a Jorge Asaf?

A. No, ma'am.

Q. And by the way, did you read the indictment that he was charged with that was the subject of his extradition on May 23rd? Did you read—

A. No, ma'am.

Q. Did you read it on the 26th when you were there?

A. No, ma'am.

Q. Without telling us what it was, did you have any intelligence about his involvement in narcotics trafficking [412] prior to your debriefing on May 23rd?

A. Yes.

Q. Did that intelligence concern narcotics trafficking in Panama?

A. No, ma'am.

Q. Did that concern narcotics trafficking in Colombia?

A. No, ma'am.

Q. How about Mexico?

A. No, ma'am.

Q. And what did it concern, about the United States?

A. Yes, ma'am.

Q. And about the United States, did that have anything to do with Alvaro Ardila?

A. No, ma'am.

Q. And about the United States, did it have anything to do with the Herrera organization?

A. No, ma'am.

Q. Did it have anything to do with money laundering?

A. Yes, ma'am.

Q. And did it have anything to do with money laundering in any specific period of time?

A. Yes, ma'am.

Q. And during the debriefing, did you discuss with Mr. Salazar any of the intelligence that you had, or you just simply asked him questions and waited for his response?

* * *

[428] containing explicit references to the crane that would be seized, its arm stuffed to overflowing with cocaine; the records of money laundering and

drug trafficking kept by one of the defendant's own co-conspirators; the defendant's two explicit confessions, confessions to his role in a far-reaching, long-term conspiracy to import tons of cocaine and to launder tens of millions of drug dollars generated by that cocaine here in the United States.

Here in the United States. Ms. George told you that that is the issue that she wants to focus on. Did the defendant know or intend that the cocaine that he was trafficking would end up in the United States? Is this a man who had no knowledge that the cocaine he is helping to transport is destined for the United States? Is this a man who has no knowledge that the millions of dollars that he is laundering is coming from drug sales in the United States?

Let's take a look at a sort of highlight reel that we put together and let's see how that picture holds up.

Let's start with the trial transcript at page 58. Here is Mr. Salazar talking to Special Agents Lowe and Cole in Colombia about what he had been doing for the Valencia organization.

"Q. Did Mr. Salazar describe his own role in the air transportation of cocaine from Colombia?

"A. Yes, he did.

[429]"Q. And what did he say about that?

"A. He recruited pilots.

"Q. Now, what did Mr. Salazar say, if anything, about where the cocaine was going once it reached Mexico?

"A. It was going to New York City."

Two lines down, "It was going to be repacked in containers and then sent to New York via land."

The defendant's words.

Let's take a look at page 58 of the transcript, and here he is again a few days later, page 62, here he is again a few days later describing what he, Mr. Salazar, was doing in Colombia, which is recruiting a pilot to fly a shipment of 5,000 kilograms of cocaine, 5 tons of cocaine from Colombia to Mexico. And he is asked:

"Q. And was there any discussion between Mr. Salazar and the Valencias of the destination of the cocaine after it had reached Mexico?

"A. This cocaine was destined to go to New York City." After the court's clarifying question the witness says, "that is what he said, that is what the defendant said."

Let's take a look for a moment at the defendant's own tape recorded words, Government Exhibit 10T. Let's take a look at page 92. Here is the defendant discussing a shipment of cocaine packed in doors. What does he say? "I send over 700 to Chicago." He repeats it again, Chicago. On the next page, **[432]** take a look at page 56 of the transcript. He is asked when he was introduced to the Valencias and this Jorge Mario and he says in 2002. That is the beginning date of the conspiracy charged in the indictment, 2002.

Now let's move on to page 57. Here you will see Hoover Salazar admitting that he knew that the Valencias—he knew they were responsible for shipping tons and tons of cocaine on a weekly basis.

"Q. Now, during this interview was Mr. Salazar asked how much cocaine the Valencia organization moved on a weekly basis?

"A. Yes, he was asked that.

"Q. And what did he say?

"A. Between 5,000 and 7,000 kilos on a weekly basis."

At the next page, Mr. Salazar admitted to his role in the transportation of that cocaine, a crucial role, one without which the cocaine transportation could not have been accomplished.

Here is the question: "Did Mr. Salazar describe his own role in the transportation of cocaine from Colombia?

"A. Yes, he did.

"Q. And what did he say?

"A. He recruited pilots."

In fact, Hoover Salazar admitted that this is exactly what he was doing for the Valencias when he was arrested in Colombia at the end of May 2005.

[433]Let's take a look at page 62.

"Was the volume of the cocaine shipment discussed at this meeting?

"A. Yes.

"Q. And what was that again?

"A. According to Mr. Salazar it was 5,000 kilos of cocaine.

"Q. Now, during this interview did Mr. Salazar say whether he agreed to recruit a pilot for the shipment?

"A. Yes, he agreed to recruit a pilot."

He agreed. That is a conspiracy, ladies and gentlemen, an illegal agreement to help transport 5 tons of cocaine is a conspiracy.

Now, how else do we know that Hoover Salazar was involved in a massive international cocaine conspiracy? Again, the defendant's own recorded words.

Let's take a look at Government Exhibit 10T.

As I said, here is the defendant in late April 2005 sitting at a table in Mexico City at a restaurant. He is describing to his co-conspirators—Alvaro Ardila, Pato, who is Jorge Asaf—he is describing to them the massive crane that would hold the one-ton plus cocaine shipment. At page 95 he says he has 1500. At page 115 he describes the giant construction machine that is going to hold that cocaine. It's red. It's huge. It's humongous, and all of it comes in the arm.

[434] You can almost picture it, ladies and gentlemen.

There is no mystery what the defendant was talking about in those tapes with his co-conspirators. You know that in the arm of that cocaine the Panamanian judicial police seized over 1300 kilograms of cocaine, and there it is in Government Exhibit 35. You know that Temo, the defendant's worker, was responsible for safeguarding that cocaine for the defendant and his partners at that warehouse in Panama. Temo even had Alvaro Ardila's name and the name of his company on a piece of note paper that was seized from his pickup truck when he was arrested.

You know that Temo also pointed out the rest of that 1500 kilos of cocaine; another over 200 kilos of cocaine that Temo pointed out that was hidden in a house in Panama. So there can be no doubt, ladies and gentlemen, that the defendant was a member of a conspiracy to move ton quantities of cocaine. In fact, the defense admitted it.

So that brings us to what the defense tells you is the big question in this trial. Did the defendant know that the cocaine that he was moving was headed for the United States? When you look at the evidence, ladies and gentlemen, you will see that it's really not that big a question. That is because the defendant answered that question for you. He answered it again and again and again. He answered it when he was arrested. He answered it 3 days later. He answered it on

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[436] prices because they mattered to him and his profit margin because his cocaine was sold here.

What we have just been through is more than enough to establish Hoover Salazar's intent, his knowledge that the conspiracy that he was involved in was aimed directly at bringing cocaine to the United States. But you also have Alvaro Ardila's testimony. Alvaro Ardila told you how at the end of 2004 he and the defendant agreed to send 30 kilograms of cocaine to Los Angeles—Los Angeles, California in the United States—at a price of about $14,500 a kilogram. At page 219 here he says, "Did you speak with anybody about the deal?" is the question.

"A. No, he discussed it with with me," and he is talking about the defendant, that he would talk to the godfather of one of his children, The Compadre, about bringing them to Los Angeles and selling them there. And that we would split up the cost and the profits of the 30 kilos among three.

Now, there is a pretty good chance that when I sit down at some point Ms. George could get up and tell you that you shouldn't believe Alvaro Ardila because

he has committed crimes and because he is testifying under a cooperation agreement. She did suggest that during the cross examination. But you have Ardila's cooperation agreement in evidence, ladies and gentlemen. That is Government Exhibit 3503H if you want it. You are free to look at it and you can judge for **[437]** yourselves whether it creates an incentive for Mr. Ardila to tell the truth and get a chance at a sentencing reduction or to lie and face a potential life sentence. And when you are looking at Alvaro Ardila's testimony remember, ladies and gentlemen, you are not being asked to evaluate his testimony alone, not in a vacuum. You are being asked to look at it alongside all of the other evidence in the case to see how it fits in with the other evidence of Hoover Salazar's years of drug trafficking and money laundering, the recorded meetings, the confessions, Ardila's records of his cocaine dealings with the defendant, the seizure of the crane that the defendant was talking about and the cocaine that was inside.

Let's take that Los Angeles shipment, for example, that shipment that we just talked about. That shipment is confirmed in records that were kept by Alvaro Ardila's accountant. This is Government Exhibit 91T. It's a translation of the accounting records that Alvaro Ardila's accountant prepared. In them you can see just how Alvaro Ardila split up the cost and profits from the 30 kilograms of cocaine that were sent to Los Angeles; Ardila's own profits on this ten kilogram share at the Los Angeles price; the 20 kilograms that Ardila sold to Hoover Salazar at the Mexico price so Salazar could make a profit in Los Angeles and, finally, the cost to Ardila, the cost to Ardila of Salazar's Compadre transporting the

cocaine to Los Angeles. Strong **[438]** corroboration, ladies and gentlemen, strong confirmation for Ardila's testimony that he and Hoover Salazar agreed to send that 30 kilograms of cocaine to Los Angeles in the United States at the end of 2004.

Now, the list of evidence, the evidence of Hoover Salazar's knowledge that he was involved in the conspiracy aimed at importing cocaine into the United States, that list is getting pretty long, but I have one more thing that I want to highlight before we move on to Count 2.

I want to take a look back to the pages of the transcript, Government 10T, where the defendant in his own words is discussing that shipment to Chicago. Let's take a look at page 88 first. He says, "We are coming with a shipment of doors." What happens to the shipment of doors? Take a look at page 89. A dog, a drug-sniffing dog, obviously starts yipping, he alerts, and the dog gets intoxicated from the smell. He says it's bad merchandise. They got there successfully with 4,000.

It's obvious that this is something illegal. It's obvious that this is cocaine because the police arrive, the PGR's office, the Attorney General's office in Mexico, and what happens at page 92? There is a shootout. And there is Hoover Salazar on tape admitting the sending of 700 kilos, over 700, 700 kilos of cocaine to Chicago. He repeats it and he repeats it on the next page.

[439]MR. BANSAL: Hoover Salazar knows, ladies and gentlemen, where the cocaine that he is helping to transport is going. He can put a Mexican cartel between himself and the United States, but he cannot escape his knowledge, his knowledge that the drugs that he was helping to transport, the tons and

tons of cocaine that he was helping to transport that they would be imported into the United States. That is guilty knowledge, ladies and gentlemen. Please listen to the Judge's instructions on this issue. That makes him guilty of conspiracy to import cocaine as charged in Count One.

Now, that brings us to Count Two, which is what we call a substantive count as opposed to a conspiracy count. Count Two charges Hoover Salazar with distributing cocaine, knowing or intending that it would later be imported into the United States. Now, distributing, I expect you will hear, just means transferring cocaine. Now, as I said, this count relates to the shipment of cocaine that was stashed in that huge red crane, Government Exhibit 20.

Now, just getting the cocaine from Colombia to Panama and stashing it in the arm of that cocaine, that's distribution. We've been through plenty of evidence just since I started today that shows that Hoover Salazar was orchestrating the cocaine shipment in that red crane. And you've seen and heard proof that Hoover Salazar continued to orchestrate that shipment after he was arrested in late May of

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STATES PROVISIONAL ARREST WARRANT FOR SALAZAR-ESPINOSA **[ILLEGIBLE]** TRANSPORTED BY THE BOGOTA CTI-SIU TO THE CALI CTI OFFICE IN CALI, COLOMBIA FOR PROCESS. BCO SA,S WARREN LOWE AND TERRY COLE ADVISED SALAZAR-ESPINOSA OF HIS EXTRATERRIOTRIAL OF DERECHOS (MIRANDA RIGHTS) AND SALAZAR-ESPINOSA WAS PROVIDED A COPY OF THESE RIGHTS TO READ. THESE EXTRATERRITORIAL DE DERECHOS (MIRANDA RIGHTS) WERE IN SPANISH. SALAZAR-ESPINOSA STATED HE UNDERSTOOD HIS RIGHTS, SIGNED THE EXTRATERRITORIAL DE DERECHOS AND AGREED TO TALK SA,S LOWE AND COLE. THE ORIGINAL SIGNED NOTIFICATION OF EXTRATERRITORIAL DE DERECHOS WILL BE LABELED AS DEA NON-DRUG EXHIBIT N-1. A COPY OF FORM WILL BE PLACED WITH THE CASE FILE. 6. (SBU) SALAZAR-ESPINOSA STATED HE LIVED IN COLOMBIA FOR NUMEROUS YEARS BEFORE MOVING TO MEXICO CITY, MEXICO D.F. IN THE EARLY 1980, SALAZAR-ESPINOSA STATED THAT HE WORKED FOR COLOMBIAN NATIONAL PACHO HERRERA (DECEASED) DURING THE EARLY 1980,S. SALAZAR-ESPINOSA,S JOE WITHIN THE PACHO HERRERA DRUG TRAFFICKING ORGANIZATION WAS TO ARRANGE THE MOVEMENT OF DRUG PROCEEDS FROM NEW YORK CITY TO CALI, COLOMBIA. SALAZAR-ESPINOSA STATE THAT THIS MOVEMENT OF DRUG PROCEEDS WAS USUALLY IN BY MONEY SHIPMENTS. MEANING THAT SALAZAR-ESPINOSA WOULD RECRUIT MONEY & MULESA THAT WOULD CARRY SUITCASES FULL OF US CURRENCY FROM NEW YORK CITY VIA COMMERCIAL AIRCRAFT TO COLOMBIA. SALAZAR-ESPINOSA ESTIMATED THAT EACH

SUITCASE CONTAINED AT LEAST 2 MILLION DOLLARS IN US CURRENCY. SA COLE ASKED WHY THE FIGURE OF 2 MILLION DOLLARS, SALAZAR-ESPINOSA RESPONDED BECAUSE THEY COULDN,T PUT ANY MORE MONEY IN THE SUITCASE. SALAZAR-ESPINOSA STATED THAT THIS BUSINESS CONTINUED FOR NUMEROUS YEARS UNTIL THE DEATH OF PACHO HERRERA IN PALIMIRA, COLOMBIA. SALAZAR-ESPINOSA STATED THAT DRUG TRAFFICKER WILMER VAREL KILLED PACHO HERRERA OVER A DRUG DISPUTE. SALAZAR-ESPINOSA STATED THAT THIS OFFICIALLY STARTED THE WAR WITHIN THE NORTE VALLE CARTEL. 7. (SBU) SALAZAR-ESPINOSA STATED THAT HE CURRENTLY KNOWS AND CONDUCTS DRUG TRAFFICKING BUSINESS WITH MEXICAN DRUG TRAFFICKER OSCAR VALENCIA, VALENCIA,S COUSIN ARMANDO VALENCIA AND GUATEMALAN DRUG TRAFFICKER JORGE MARIO, LNU. THESE THREE DRUG TRAFFICKERS ARE PART OF THE MEXICAN DRUG CARTEL. SALAZAR-ESPINOSA STATED A MEXICAN SUBJECT NAME JOSE FRANCISCO GONZALEZ INTRODUCED SALAZAR-ESPINOSA TO OSCAR VALENCIA AND JORGE MARIO, LNU IN 2002 AND SHORTLY AFTER VALENCIA ASKED SALAZAR-ESPINOSA FOR A FAVOR. VALENCIA ASKED SALAZAR-ESPINOSA TO COORDINATE THE TRANSPORTATION OF MILLION DOLLARS IN TWO CARS TO PANAMA CITY, PANAMA. SALAZAR-ESPINOSA STATED HE PAID THE TRANSPORTERS (UNIDENTIFIED) OF THE MONEY A ___[ILLEGIBLE]___ COMMISION TO DELIVER THE MONEY TO PANAMA. SALAZAR-ESPINOSA STATED THAT THE 8 MILLION DOLLARS WAS TO GIVEN TO COLOMBIAN DRUG

TRAFFICKERS (UNKNOWN TO SALAZAR-ESPINOSA) FOR PAYMENT OF A DRUG SHIPMENT THAT MADE IT TO THE UNITED STATES. SALAZAR-ESPINOSA STATED THAT THIS GROUP MOVES BETWEEN 5,000 & 7,000 KILOGRAM,S OF COCAINE ON A WEEKLY BASIS AND HE HAD RECENTLY ATTENDED MEETINGS WHERE THE ABOVE TRAFFICKERS NEGOTIATED/COORDINATED THESE COCAINE LOADS. SALAZAR-ESPINOSA STATED THAT VALENCIA AND JORGE MARIO, LNU COORDINATE THESE MULTI-THOUSAND KILOGRAM LOADS WITH **[ILLEGIBLE]**: COLOMBIA AUTODEFENSES; COMMANDER & **[ILLEGIBLE]** JUAN CARLOS JIMENEZ-NARANJO. THE VALENCIA,S UTILIZE LARGE COMMERCIAL AIRCRAFT TO RECEIVE THESE SHIPMENTS OF COCAINE IN THE MEXICO D.F. SALAZAR-ESPINOSA STATED THAT HE HAS IN THE PAST PUT THESE MEXICAN TRAFFICKERS IN CONTACT WITH COLOMBIAN PILOTS FROM BOGOTA TO FACILITATE THE SHIPMENT OF COCAINE FROM COLOMBIA TO MEXICO D.F. SALAZAR-ESPINOSA STATED THAT SOME OF THESE DRUG SHIPMENTS LEAVE FROM BOGOTA, BARANQUILLA AND SMALL RURAL RUNWAYS NEAR BUCARAMANGA, COLOMBIA. THESE AIRPLANES FLY DIRECT FROM COLOMBIA TO MEXICO CITY D.F. WHERE THE COCAINE WAS OFF LOADED BY MEMBERS OF THE MEXICAN CARTEL. ONCE THE COCAINE IS OFF LOADED IT IS STORED IN LOCAL ABODEGASE WAREHOUSES AND THEN REPACKED IN CONTAINERS FOR SHIPMENT VIA LAND TO THE FINAL DESTINATION OF NEW YORK, NEW YORK. SALAZAR-ESPINOSA ALSO STATED THAT SOMETIMES THESE DRUG SHIP-

MENTS WOULD ARRIVE IN GUATEMALA THEN BE SHIPPED VIA TRACTOR TRAILERS TO MEXICO CITY D.F. THEN SENT TO NEW YORK. 8. (SBU) SALAZAR-ESPINOSA ____ **[ILLEGIBLE]** ____ HIS ROLE WITHIN THIS ORGANIZATION WAS TO ARRANGE BULK MONEY SHIPMENTS FROM NEW YORK TO MEXICO AND COLOMBIA. SALAZAR-ESPINOSA STATED THAT THIS ORGANIZATION WOULD MOVE BETWEEN 14 MILLION DOLLARS PER WEEK. THIS MONEY WAS THE DRUG PROFIT FROM THE SHIPMENTS OF COCAINE TO NEW YORK. BUT, SALAZAR-ESPINOSA REFUSED TO ANSWER QUESTIONS ON HOW THE MONEY IS CURRENTLY BEING MOVED FROM NEW YORK TO MEXICO AND COLOMBIA. FURTHERMORE, SALAZAR-ESPINOSA REFUSED TO PROVIDE CURRENT CONTACTS OF NORTE VALLE TRAFFICKERS IN COLOMBIA. 9. (SBU) SALAZAR-ESPINOSA STATES THAT THE CURRENT PRICE OF A KILOGRAM OF COCAINE IS 17,000 TO 18,000 US DOLLARS IN NEW YORK AND IN MEXICO CITY D.F. THE PRICE OF A COLOMBIA KILOGRAM OF COCAINE IS BETWEEN 8,000-9,000 US DOLLARS. SALAZAR-ESPINOSA HAS HEARD THE ABOVE MEXICAN TRAFFICKERS TALKING ABOUT THE PROFIT MARGIN THEY WOULD BE EARNING BASED ON CURRENT PRICE. 10. (SBU) SALAZAR-ESPINOSA STATED THAT COLOMBIAN DRUG TRAFFICKERS NOT IDENTIFIED WOULD USE CONTACTS/PILOTS/AIRPLANES FROM THE BOGOTA AIRPORT, BARRANQUILLA AIRPORT AND SMALL AIRFIELD (CLANDESTINE) NEAR BUCARAMAGA TO SEND DRUG SHIPMENTS TO MEXICO D.F. 11. (SBU)

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FROM IPIALES, COLOMBIA TO CALI, COLOMBIA. 4. (SBU) AT APPROXIMATELY 5:30 PM, SALAZAR-ESPINOSA ACCOMPANIED BY A COLOMBIAN FEMALE ARRIVED AT THE CALI INTERNATIONAL AIRPORT VIA TAC CHARTER AIRCRAFT, TAIL NUMBER HR4260. SALAZAR-ESPINOSA PRESENTED BOGOTA CTI-SIU MEMBERS A COLOMBIAN IDENTIFICATION CARD THAT IDENTIFIED SALAZAR-ESPINOSA AS A MEMBER OF CONGRESS IN COLOMBIA. MEMBERS OF THE BOGOTA CTI-SIU ARRESTED SALAZAR-ESPINOSA ON A COLOMBIA ARREST WARRANT THAT WAS ISSUED BASED ON PROBABLE CAUSE LISTED IN THE UNITED

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UNCLASS E F T O
DEA 05/26/05
DEA: DGADDIS
DEA:CFEISTL
DEA: CULRICH
DEA: KROBINSON

DEA AMEMBASSY BOGOTA
AMEMBASSY MEXICO CITY DF
DEA HQS WASHDC
DEA NEW YORK FD
DEA MIAMI FD

SENSITIVE
POST FOR DEA ONLY

DEA HQS FOR. DEA HQS FOR: OI/WHALEY, OEL/STEFFICK, SEGEDA, TREMPALA, SARI, OSI/ASAC MCARDLE, SC KOLEN.

DEA MIAMI FD FOR ASAC, FRED GANEM, GS MIKE PREMO, AND SA GREGORY MILLARD

DEA NEW YORK FD FOR ASAC HEIDI RAFANELLO, T-41 GS/SGT JOE OSHEA, T-41 TFO JOHN BARRY, AND T-41 SA ERIC TRIANA

AMEMBASSY MEXICO CITY FOR DEA GS MICHAEL CORBETT AND RD LARRY HOLLIFIELD

E.O. 12958: N/A
TAGS : DEA
SUBJECT: ARREST AND SUBSEQUENT DEBRIEFING OF CPOT TARGET MANUEL SALAZAR ESPINOSA IN BOGOTA, CB 5/26/2005 (ZE-03-0034/YEC1K; NARVAEZ, CARLOS).

SALAZAR-ESPINOSA, HOOVER
OPERATION ESPERANZA
SALAZAR-ESPINOSA, MANUEL

* * *

2. (SBU) THE BRD HAS BEEN IN CLOSE COORDINATION WITH NEW YORK FIELD DIVISION GROUP T-41, MIAMI FIELD DIVISION GROUP 4, SPECIAL OPERATION DIVISION (SOD) OSL AND THE MERIDA, MEXICO RESIDENT OFFICE IN REFERENCE TO SALAZAR ESPINOSA. THE UNITED STATES ATTORNEY'S OFFICE IN THE SOUTHERN DISTRICT OF NEW YORK AND THE SOUTHERN DISTRICT OF FLORIDA HAVE SECURED UNITED STATES FEDERAL DRUG INDICTMENTS AGAINST SALAZAR ESPINOSA. IN MAY 2005, THE SOUTHERN DISTRICT OF NEW YORK SENT THE PROVISIONAL ARREST WARRANT TO THE UNITED STATES EMBASSY IN BOGOTA, COLOMBIA.

3. (SBU) THE BOGOTA CTI-SIU DEVELOPED INTELLIGENCE INFORMATION WHICH INDI-

CATED THAT SALAZAR ESPINOSA WOULD BE TRAVELING TO CALI, COLOMBIA TO CELEBRATE HIS BIRTHDAY IN MAY 2005. AT APPROXIMATELY 5:30 PM ON MAY 23, 2005, SALAZAR ESPINOSA AND AN UNIDENTIFIED COLOMBIAN FEMALE ARRIVED AT THE CALI INTERNATIONAL AIRPORT VIA TAC CHARTER AIRCRAFT. MEMBERS OF THE BOGOTA CTI-SIU ARRESTED SALAZAR ESPINOSA ON A COLOMBIAN ARREST WARRANT THAT WAS ISSUED BASED ON PROBABLE CAUSE LISTED IN THE UNITED STATES PROVISIONAL ARREST WARRANT FOR SALAZAR ESPINOSA. (NOTE. REFERENCE DEA TWX DATED 5/24/2005, DRAFTED BY SA TERRY COLE FOR. ADDITIONAL DETAILS REGARDING THE POST-ARREST INTERVIEW AND STATEMENTS OF SALAZAR ESPINOSA IN CALI, CB)

4. (SBU) ON MAY 24, 2005, SALAZAR ESPINOSA WAS TRANSFERRED TO THE COLOMBIAN FISCALIA HEADQUARTERS IN SOCIOTA, COLOMBIA. SALAZAR-ESPINOSA WAS PLACED IN A TEMPORARY HOLDING FACILITY AT THE FISCALIA'S OFFICE WHILE AWAITING TRANSFER TO A LOCAL PRISON.

5. (SBU) BRD SA'S WARREN LOWE AND TERRY COLE ALONG WITH IRS KELLY ROBINSON WENT TO THE COLOMBIAN FISCALIA OFFICE ON MAY 26, 2005, TO FURTHER DEBRIEF SALAZAR ESPINOSA REFERENCE HIS DRUG TRAFFICKING AND MONEY LAUNDERING ACTIVITIES. SA LOWE AGAIN ADVISED SALAZAR ESPINOSA OF HIS EXTRATERRITORIAL DE DERECHOS (MIRANDA RIGHTS) AND

SALAZAR ESPINOSA WAS PROVIDED A COPY OF THESE RIGHTS TO READ (NOTE: THESE EXTRATERRITORIAL DE DERECHOS (MIRANDA RIGHTS) WERE TYPE-WRITTEN IN SPANISH.) SALAZAR ESPINOSA STATED HE UNDERSTOOD HIS RIGHTS, INITIALED AND DATED EACH STATEMENT OF THE EXTRATERRITORIAL DE DERECHOS AND AGREED TO TALK SA'S LOWE AID COLE AND IRS ROBINSON.

6. (SBU) SALAZAR ESPINOSA BEGAN THE DEBRIEFING BY DISCUSSING AN UPCOMING COCAINE SHIPMENT THAT HE WAS COORDINATING. SALAZAR ESPINOSA REPORTED THAT FRANCISCO GONZALEZ AND MANUEL OSCAR VALENCIA (BOTH MEXICAN NATIONALS) APPROACHED SALAZAR ESPINOSA REGARDING THE TRANSPORTATION OF A LOAD OF COCAINE. THE INITIAL MEETING BETWEEN SALAZAR ESPINOSA, GONZALEZ, AND VALENCIA TOOK PLACE IN MEXICO AT A COFFEE SHOP. SUBSEQUENT TO THIS INITIAL MEETING THE THREE INDIVIDUALS MET AT A RESTAURANT IN MEXICO CITY, D.F. TO FURTHER DISCUSS THE DETAILS OF THE PREVIOUSLY MENTIONED LOAD. THE SECOND MEETING TOOK PLACE IN A LOCAL RESTAURANT, IDENTIFIED AS SANBORNS ON MAY 19, 2005. SALAZAR ESPINOSA NOTED THAT GONZALEZ AND VALENCIA DO NOT USE CELL PHONES OR LAND LINES TO COMMUNICATE BUT RATHER TALK VIA NEXTEL RADIO. SALAZAR ESPINOSA DOES NOT KNOW THE RADIO CODES OR PHONE NUMBERS FOR EITHER GONZALEZ OR VALENCIA, HE INDICATED THAT THEIR CODES ARE PRO-

GRAMMED INTO HIS NEXTEL RADIO WHICH IS AT HIS HOME IN MEXICO.

7. (SBU) SALAZAR ESPINOSA INDICATED THAT GONZALEZ AND VALENCIA WERE TRYING TO COORDINATE THE TRANSSHIPMENT OF 5,000 KILOGRAMS OF COCAINE. GONZALEZ AND VALENCIA RECRUITED SALAZAR ESPINOSA TO FIND A COLOMBIAN PILOT WHO COULD TRANSPORT THE 5,000 KILOGRAM LOAD (NOTE: SALAZAR ESPINOSA DID NOT REVEAL THE ORIGIN OF THE LOAD NOR THE PICK-UP OR DROP-OFF LOCATIONS. HE DID INDICATE THAT THE LOAD WAS ULTIMATELY DESTINED FOR NEW YORK, NEW YORK). AT THE CONCLUSION OF THIS MEETING SALAZAR ESPINOSA AGREED TO LOCATE AND RECRUIT AN EXPERIENCED COLOMBIAN PILOT TO TRANSPORT THE LOAD.

8. WHEN ASKED WHEN HE MET VALENCIA, SALAZAR ESPINOSA REPLIED THAT THEY MET 6-8 MONTHS AGO IN OCTOBER OR NOVEMBER 2004. WHEN ASKED WHY VALENCIA FELT COMFORTABLE APPROACHING SALAZAR ABOUT ASSISTING WITH TRANSPORTING COCAINE AFTER ONLY BEING ACQUAINTED FOR 6-8 MONTHS, SALAZAR ESPINOSA REPLIED THAT VALENCIA KNEW THAT SALAZAR ESPINOSA WAS A COLOMBIAN NATIONAL AND ASSUMED THAT AS A RESULT OF SALAZAR ESPINOSA'S NATIONALITY HE COULD SUCCESSFULLY RECRUIT A PILOT. (NOTE: IN THE POST ARREST DEBRIEFING OF SALAZAR ESPINOSA ON 5/23/2005, HE INDICATED TO S/A'S LOWE AND COLE THAT

HE MET VALENCIA AND SOME OTHER MEXICAN NATIONAL DRUG CARTEL MEMBERS IN 2002, REF. PARAGRAPH 7 OF THE TWX DRAFTED BY SA COLE ON 5/24/2005).

9. (SBU) SALAZAR ESPINOSA REPORTED THAT HE WAS GOING TO BE PAID A COMMISSION FOR HIS RECRUITING EFFORTS, BUT DID NOT ARTICULATE HOW MUCH HE WAS GOING TO BE PAID. SALAZAR ESPINOSA INDICATED THAT GONZALEZ AND VALENCIA DID NOT DISCUSS THE DETAILS OF HIS COMMISSION AND THAT TYPICALLY SEVERAL VARIABLES GO INTO THE PROCESS OF PAYING A COMMISSION. ACCORDING TO SALAZAR ESPINOSA, GONZALEZ AND VALENCIA WERE IN THE BEGINNING STAGES OF COORDINATING THIS LOAD AND THE TOPIC OF COMMISSIONS WOULD PROBABLY NOT BE DISCUSSED UNTIL THE DEAL WAS FINALIZED. SALAZAR ESPINOSA WENT ON TO SAY THAT HIS COMMISSION WOULD LIKELY BE PAID FROM THE PILOT' S PROCEEDS.

10. (SBU) SALAZAR ESPINOSA REVEALED THAT HE FLEW TO CALI, COLOMBIA ON 5/23/2005, TO HAVE SOME DENTAL WORK DOVE AT A LOCAL DENTIST'S OFFICE. HE THEN PLANNED TO FLY TO BOGOTA, COLOMBIA TO RECRUIT A PILOT. INITIALLY SALAZAR ESPINOSA REPORTED THAT HE PLANNED TO MEET WITH MULTIPLE PILOTS, BUT WHEN ASKED TO IDENTIFY SPECIFICALLY WHO HE PLANNED TO TALK TO UPON ARRIVING IN BOGOTA, HE ONLY IDENTIFIED ROBERTO GONZALEZ. ACCORDING TO SALAZAR ESPINOSA, GON-

ZALEZ IS AN EXPERIENCED PILOT BASED IN BOGOTA, COLOMBIA; HE IS APPROXIMATELY 50 YEARS OF AGE, SHORT IN STATURE, WITH A MOUSTACHE. SALAZAR-ESPINOSA AND GONZALEZ HAVE KNOWN EACH OTHER FOR APPROXMTELY 10 YEARS BUT SALAZAR-ESPINOSA DOES NOT KNOW GONZALEZ'S COMPLETE NAME, HOME ADDRESS OR PHONE NUMBER. SALAZAR ESPINOSA STATED THAT WHEN HE WANTS TO TALK TO GONZALEZ HE SIMPLY GOES TO LOCATIONS THAT GONZALEZ FREQUENTS. HE BECAME EVASIVE WHEN ASKED TO REVEAL THE NAMES OF THE LOCATIONS.

11. (SBU) SALAZAR ESPINOSA INSISTED THAT HE HAD NO FURTHER DETAILS REGARDING THE 5,000 KILOGRAM COCAINE SHIPMENT BECAUSE FRANCISCO GONZALEZ AND VALENCIA WERE IN THE BEGINNING STAGES OF ARRANGING THE DEAL AND ADDITIONAL DETAILS WOULD BE DISCUSSED AFTER SALAZAR ESPINOSA SECURED A PILOT AND RETURNED TO MEXICO. SALAZAR ESPINOSA STATED THAT SINCE HE HAS BEEN ARRESTED AND THE STORY OF HIS ARREST WAS LIKELY IN THE MEDIA HIS OPPORTUNITY TO GATHER ADDITIONAL DETAILS ABOUT THIS DEAL HAD BEEN SIGNIFICANTLY DIMINISHED.

FINANCIAL:

12. (SBU) SA COLE ASKED SALAZAR ESPINOSA ABOUT HIS PERSONAL FINANCES AND HOW HE CURRENTLY EARNS A LIVING. SALAZAR ESPINOSA STATED THAT HE IS NOT CUR-

RENTLY INVOLVED IN DRUG TRAFFICKING AND HAS NOT BEEN ASSOCIATED WITH TRAFFICKING FOR MANY YEARS. SALAZAR ESPINOSA REPORTED THAT HE IS A BUSINESS MAN AND IS INVOLVED IN REAL ESTATE INVESTMENTS AND OTHER BUSINESSES. WHEN ASKED TO IDENTIFY PROPERTIES THAT HE OWNS IN THE U.S., SALAZAR ESPINOSA REPLIED THAT HE DOES NOT OWN ANY PROPERTY IN THE U.S. WHEN ASKED IF ANY OF HIS FAMILY MEMBERS HAVE PURCHASED PROPERTY OR BUSINESSES ON HIS BEHALF IN THE U.S., SALAZAR ESPINOSA ADMITTED TO PAYING HIS EX-WIFE $1 MILLION DOLLARS (U.S.), 10 YEARS AGO AND FURTHER STATED THAT SHE HAS PURCHASED PROPERTY AND PERHAPS ESTABLISHED BUSINESSES WITH THE MONEY HE GAVE HER. (NOTE: SALAZAR ESPINOSA WAS PREVIOUSLY MARRIED TO MARIA FERNANDO DEL ROSARIO POTESOCAMPO, AND THE $1 MILLION DOLLARS WAS A DIVORCE SETTLEMENT THAT HE PAID HIS FORMER WIFE AFTER THE MARRIAGE WAS TERMINATED.)

13. (SBU) SA LOWE ASKED SALAZAR ESPINOSA TO IDENTIFY HIS OTHER BUSINESSES AND SALAZAR ESPINOSA REITERATED THAT HE PRIMARILY WORKS IN REAL ESTATE AND WITH REAL ESTATE BROKERS. WHEN ASKED TO IDENTIFY THE NAMES OF THE BROKERS HE HAS WORKED WITH, HE REPLIED THAT "THERE WERE SEVERAL". WHEN ASKED TO IDENTIFY THE PROPERTIES OR THE NAMES

ON THE PROPERTIES HE BECAME EVASIVE AND REPLIED "THERE WERE SEVERAL."

14. (SBU) SALAZAR-ESPINOSA LATER ADMITTED TO OWNING A SMALL BUSINESS IN MEXICO. SALAZAR ESPINOSA IDENTIFIED THE BUSINESS AS TRICORN INTERNATIONAL AND STATED THAT IT IS A CLOTHING AND UNIFORM MANUFACTURING COMPANY. SALAZAR ESPINOSA FURTHER STATED THAT HE DOES NOT HAVE ANY TIES TO ANY U.S. BUSINESSES, PROPERTIES OR ACCOUNTS.

15. (SBU) SA LOWE INQUIRED ABOUT SALAZAR ESPINOSA TRANSFERRING MONEY FROM THE U.S. TO COLOMBIA. SALAZAR ESPINOSA DENIED EVER TRANSFERRING MONEY FROM COLOMBIA TO THE U.S. WHEN ASKED IF HE HAD TRANSFERRED MONEY FROM THE U.S. TO COUNTRIES OTHER THAN COLOMBIA, INCLUDING MEXICO AND/OR EUROPE, SALAZAR ESPINOSA DENIED TRANSFERRING MONEY TO/OR FROM THE U.S. TO OTHER COUNTRIES. WHEN ASKED WHEN HE LAST ATTEMPTED TO TRANSFER $500,000 (U.S.) OR MORE FROM THE U.S. TO COLOMBIA, SALAZAR ESPINOSA BECAME AGITATED AND DENIED TRANSFERRING MONEY AND ANNOUNCED THAT HE WANTED TO CONCLUDE THE DEBRIEFING. SUBSEQUENT TO MAKING THIS STATEMENT, SALAZAR ESPINOSA LEFT THE INTERVIEW ROOM AND WAS RETURNED TO HIS HOLDING CELL.